United States Court of Appeals for the Second Circuit

APPENDIX

76-4147

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-4147

AAACON AUTO TRANSPORT, INC.
Petitioner,

v.

INTERSTATE COMMERCE COMMISSION
and UNITED STATES OF AMERICA
Respondents.

B
P/S

ON PETITION FOR REVIEW OF AN ORDER OF
THE INTERSTATE COMMERCE COMMISSION

RECORD APPENDIX

VOLUME 3

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UNITED STATES COURT OF APPEALS
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IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AAACon Auto Transport, Inc.)
)
Petitioner,)
)
v.) No. 76-4147
)
INTERSTATE COMMERCE COMMISSION)
and UNITED STATES OF AMERICA)
)
Respondents.)

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culminating letter.

Q I ask if this is a copy of that letter?

A That is the copy.

Mr. Kiel: May I ask that the letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 309.

(Respondent's Exhibit No.309,
Witness Zola, was marked
for identification.)

Q Mr. Zola, can you tell us approximately how many pieces of correspondence you had in connection with this matter with the shipper and with Mr. Tomany attempting to aleviate this situation?

Mr. Browning: I object to the question. If he is going to ask him how many pieces of correspondence, that's all right. But in an attempt to aleviate the situation --

Mr. Kiel: I will withdraw those words.

Q How many pieces of correspondence were there in this matter?

A In terms of written correspondence, there was about 15 separate letters between the parties you have mentioned, plus other letters and phone calls from other parties which are not reflected in these letters.

Q Does the name Lieutenant Colonel H. K. Smith mean anything to you?

A Yes, sir.

Q Would you tell us who you know Colonel Smith to be?

A Colonel H. K. Smith is with the Department of Defense in Washington D.C. and he telephoned me approximately --

Mr. Browning: I object. Mr. Examiner, he is going way beyond in response.

Mr. Kiel: Let me ask another question.

Q Did you speak to Colonel Smith of the U.S. Air Force headquarters in Washington D.C. about the General Wolfe matter?

A Yes, I did.

Q Would you tell us what occurred?

A Yes, he called me up about nine or ten months ago and wanted to discuss General Wolfe's claim. I told him that we had been corresponding with General Wolfe, with the Interstate Commerce Commission, with Colonel Herbert, and I explained the entire situation to him. We had about two or three phone calls, because I didn't have this file in my office and then I called him back, and then he subsequently wanted more information. And we went over every piece of allegation made by General Wolfe that was known to us and our response thereto, and I told him at that time that we had told the General over and over that if the engine were repaired, we would be happy to transport the vehicle. Colonel Smith, at the end of the conversation, stated to me that he -- well, he characterized General Wolfe in an unfavorable way, which characterization was based solely, I believe, on my discussion with him. My feeling now, having met the General, is that he was -- there's nothing unfavorable about him as a person. He just didn't understand the situation at that time. It seemed that as a resolution of my conversations with Colonel Smith that there was no dispute between himself and myself, that we had properly handled the claim.

Q Do you know who Colonel Smith was and how he came to contact you?

A He identified himself as one in the Department of Defense who had been contacted by the armed forces in Alaska to make inquiry as to the nature of this claim and the results of it.

Q Has your company paid anything to Clif's Service Station for undertaking to analyze the car to determine what repairs and damages occurred?

A Yes.

Q Did you undertake any investigation to determine the value of the automobile at the time that it became incapacitated while it was in the custody of your driver?

A Yes, we did.

Q Do your records indicate what make and type and year vehicle this was?

A Yes, they do.

Q What does it indicate?

A I would have to get it out -- I believe it is -- off the top of my head, it was a '64 Ford. I can give you the details from our records.

Q There are some documents in evidence. Perhaps that will be of help. I show you Exhibit 85, which indicates it to be a 1964 Ford.

A Yes, but if you go to an earlier exhibit, you will find the owner's authorization which gives quite a bit of detail on what was in the vehicle, and what was not in the vehicle. Not the bill of lading, the freight bill. I have it in my own records. I have it, Mr. Kiel.

The vehicle was a 1964 Ford four-door sedan and it has no radio. It had other items and those items are listed on the freight order form.

Q Did you undertake an investigation to determine the value of the automobile in perfect condition?

A Yes, sir.

Q At the time it tendered to you and at the time it was supposed to be delivered in Seattle?

A Yes, sir.

Q From what did you determine that?

A The result of our determination was that the value of the automobile --

Q From what, not the results.

A   I am sorry. From th
National Market Report,

Q   What did you determi
value?

A   The value of the veh
$250 and $300, depending
coast or west coast valua
radio, I feel that item

Q   Did you identify you
the complaint and the pos
be filed?

A   Yes, sir.

Q   Did you advise them

A   Yes, we did.

Q   Did they make any re
their opinion?

A   They indicated that

Q   Have any of the lett
with this matter been lef

A   No, sir.

Exam. Reilly: How m
Wolfe?

Mr. Kiel: I think w
might just check a few th

Q   Did you hear the tes

was present when the antifreeze was added to his car, and that in his opinion, there was sufficient antifreeze for that part of the country, to say the least?

A   Yes, sir.

Q   What did your investigation disclose with respect to the situation as it related to antifreeze?

A   Our investigation disclosed that the antifreeze, at the time of the difficulty experienced by the driver, was not sufficient, that the bottom part of the radiator was as a result freezing, and was freezing as a result of insufficient antifreeze causing inadequate circulation resulting in the straining condition of an overheating engine in very cold temperature.

Q   Did you ever see the front of an air conditioner that was caked up with ice and no cooling was coming through?

A   That's an example of the kind of situation that we believe occurred in General Wolfe's vehicle.

Q   Is that the conclusion that Clif's arrived at in the letter Exhibit --

Mr. Browning: I object to that.

Exam. Reilly: Cliff didn't say exactly that. I think the letter speaks for itself.

Q   With respect to this matter, sir, and in view of your investigation, -- strike that. Did General Wolfe ever indicate to your company, that he would like you to buy the car?

A Yes, sir.

Q In your opinion, would it be proper for you to buy the car and not require the shipper to mitigate damages?

A No, sir, it would not.

Q Has the Commission sustained that position in its recent discussion in 340ICC?

A It has.

Q Have you formed any conclusion with respect to your responsibility and the propriety of the complaint in connection with this delivery?

A Yes, sir.

Q Is that based upon information that you have developed?

A Yes.

Q Please indicate your conclusion.

A Our conclusion was that the damage to General Wolfe's car was the result of inherent conditions, that there was no evidence of driver negligence. Indeed that the driver acted correspondently. That no liability claim was ever substantiated by General Wolfe with regard to the liability of our company with regard to the engine difficulties, nor was a claim made which could be the basis of a voluntary payment. Finally, as to the allegations by General Wolfe that the driver abandoned the vehicle, we find that the driver -- it is our opinion that the actions of the driver do not constitute adbandonment of a vehicle. The driver is not, pursuant to our agreement or our tariffs, required to stay with a vehicle once it has broken down and the repairs take a long period of time. We feel it was unfortunate that we were unable to have General Wolfe effect the repairs so that the transportation could be completed, especially in regard to the unusual high value he placed upon that vehicle.

Mr. Kiel: Mr. Examiner, I have nothing more on this.

Exam. Reilly: All right, we will recess until 9:30 in the morning.

(Whereupon, at 5:00 o'clock p.m. hearing was recessed.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

- -x

In the Matter of :

AAACON AUTO TRANSPORT, INC., Investigation and Revocation of Certificate : DOCKET NO. MC-C-7287

AAACON AUTO TRANSPORT, INC., Petition for Declaretory Order : DOCKET NO. MC-C-7287 (Sub No. 1)

AUTO TRIP USA. INC. Freight Forwarder Application, New York, New York : DOCKET NO. FF-359

- -x

Room E2222
26 Federal Plaza
New York, New York
Friday, March 24, 1972

MET: Pursuant to adjournment at 9:45 o'clock a.m.

BEFORE:

JOSEPH A. REILLY, Examiner

APPEARANCES:

(As heretofore noted)

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WITNESS	DIRECT
Respondent's:	
Ralph Zola	1917

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P R O C E E D I N G S

Exam. Reilly: On the record.

CONTINUED DIRECT

Q (By Mr. Kiel) Mr. Zola, yesterday there was a discussion with respect to the Sanford Rosen-Redlin matter and when I asked you a question with respect to the Redlin matter there was some objection, and it was the Examiner's understanding and mine that this matter was not gone into and did you check with me the transcripts and find that, in fact, there was testimony about the Redlin matter by Mr. Rosen?

A Yes, sir, as I stated.

Q Did that begin at Page 517?

A Yes, sir.

Q Now, sir, with respect to that, do you recall Mr. Rosen's testimony that it was necessary for Mr. Rosen to accept settlement and accept a release before he could get an automobile?

A He stated that Mr. Redlin informed him.

Q Sir, have you seen Exhibit 301?

A Yes, sir.

Q And that is the appraisal of the automobile company upon which the claim of Mr. Redlin was paid?

A Yes, sir.

Q And does it show the name of the customer who brought the car in for an estimate?

A Yes, sir, it is Mr. Redlin and that was the basis of the settlement.

Q Is there any foundation for the statement of Mr. Rosen that the only way his brother-in-law could get his car was by signing a release?

A No, sir, and the contradiction of that is the bill of lading which Mr. Redlin signed on the date -- he would not sign a release if he was being forced to.

Q Have you found any record of any customer being forced to sign a paper before getting his car except that it might be a receipt for receiving it?

A No.

Q Now, with respect to the Coggins Claim, have you familiarized yourself with that matter?

A Yes, sir.

Q And in fact, have you been informed in that matter since it came to be?

A Yes, sir.

Q Now, when the automobile of Mr. Coggins was tendered to your company for transportation, how many miles would the vehicle -- how many miles had it been operated previously?

A 9,534, I believe.

Q Mr. Coggins indicated 354 instead of 534.

A Well, then he was correct.

Q With respect to your agent in Atlanta, Robert Donath, how long had he been in your organization by the time the incident with Mr. Coggins occurred?

A Four months.

Q When a new person becomes involved with your organization, do you do anything to inform him of the responsibilities of your company?

A Yes, he is given training both in the field and at our New York office, and he is given a manual which is gone over with him step by step. One of the instructions that he receives is that they are never to use any automobile belonging to a shipper for any personal use.

Q Nevertheless, did you hear the testimony of Mr. Coggins?

A Yes, sir.

Q Now, when this accident occurred in which Coggins' automobile was involved --

Mr. Kiel: Strike that.

Q Does your company have any requirement with respect to notification of your principal office in New York City if an accident or a claim is generated?

A Yes, sir. Each office is instructed to notify the New York Claims Department of every occurrence and every accident, immediately.

Q Now, did Mr. Donath notify you immediately?

A No, sir.

Q Did you attempt to ascertain why that situation occurred?

A Yes, we interviewed Mr. Donath and his secretary on that matter and apparently he felt that he had committed a transgression and he was nervous and embarrassed, and he was trying to take care of the matter himself without letting us know that it occurred. Infortunately Mr. Coggins called me, we in New York and any other employee except Mr. Donath and his secretary, had no knowledge that the accident occurred.

Q What, if anything, did your company do as a result of this situation?

A Well, I spoke to Mr. Coggins --

Q Well, first to your relationship with Mr. Donath, what did your company do?

A Mr. Donath -- in the light of the fact that this is the only situation of its type that has arisen with Mr. Donath, and he is a reputable and responsible business man, he has been put on probation by our company and he has been fined by our company for the act, and we have taken other measures against him to make it emphatic and clear to him that such actions will not be tolerated. In addition, we have informed every other office of our company of what had occurred just so they will be in a position to know and be forewarned that similar actions would be taken against them, except we stated in the future that employees would be dismissed.

Q Has a situation as described by Mr. Coggins ever occurred in your company before?

A That is the first one ever to my knowledge.

Q After the unfortunate accident and Mr. Coggins notifying you of the accident, what did you do?

A After we found out about the accident we obtained a complete report from Mr. Donath, we obtained estimates of the repair of the car, a police report and we took on the investigatory proceedings of the matter.

Q At any time did you indicate or insinuate that your company was not legally responsible as a common carrier?

A No, sir, just the reverse. We informed Mr. Coggins and his insurance company that we were responsible for the damage to Mr. Coggins' vehicle and as to the third party claims, we notified them that we had notified our insurance carrier of what had transpired, and they were therefore on notice and we described our policy to them, and we let them know the status that we had reported.

Q As part of your investigation and processing of this matter, did you cause to have undertaken an appraisal of the damage including the cost of replacement, salvage value and so on?

A Yes, sir.

Q Did you get a report dated August 9, 1971 in connection with that matter?

A Yes, sir.

Q I show you a copy of a letter to you from Mr. Donath, your Atlanta office and ask if that is a copy?

A Yes, sir.

Mr. Kiel: May I ask that that be marked for identification, please.

Exam. Reilly: Marked for identification as Exhibit 310.

(Respondent's Exhibit No.310, Witness Zola, was marked for identification.)

Q Based upon your experience, did you have any opinion with respect to the amounts of the salvage bids which had been received and which are shown in Exhibit 310?

A Well, we felt that the salvage bids might be a little low, but in as much as we had obtained them, we had no reason to question them. I was surprised at the amount of the damage, but it appeared from the cost of replacement and the salvage bids, and our knowledge of the cost of the value of the vehicle, that the salvage bids had been obtained and the best thing to do would be to declare the car a total loss. That is to say, that would be the best way to treat the claim in terms of mitigating damages.

Q Do you know the amount of salvage that was ultimately secured in connection with that automobile?

A The amount of salvage that was ultimately secured was approximately half of that amount. If I can review my notes, I can give you the exact figure.

Q Do you have any opinion why the ultimate salvage value was different from the value that your initial investigation indicated that the car was worth?

A I have knowledge. The reason was that Mr. Coggins' insurance company, which had taken over title of the vehicle, delayed in obtaining the salvage value for a period of months during which period storage charges accrued, and started to eat in total salvage value to the point where the salvage value was a fraction of what could have been obtained.

Q Did you take any steps after you got the salvage report to notify the customer that he should do something to remit his losses?

A Yes, sir.

Q I show you a copy of a letter dated August 10, 1971, from you to Mr. Coggins, and ask if that is a copy of a letter that you sent and in the bottom right-hand corner, I ask you what that is?

A That is the receipt for certified mail. We had mailed it certified mail because we had had several conversations with Mr. Coggins and his insurance company, and there was this inordinate delay in getting salvage and as a result we wanted to not only put them on notice, but also to encourage them to obtain the salvage immediately. The situation on repair was that it was uneconomical and this was what, in our opinion, was the best thing to do, the best method for mitigating damages.

Q At this point, had anybody filed a claim against you--

Mr. Kiel: Well, may I have it marked for identification?

Exam. Reilly: Marked for identification as Exhibit 311.

(Respondent's Exhibit No.311, Witness Zola, was marked for identification.)

Q After Mr. Coggins was aware of the accident to his car, do you know whether or not he made any representations to anyone with regard to whether or not the car was stolen?

A Yes, sir.

Q Would you tell us about that?

A He wanted to report the car stolen and he made representations to us, and to his insurance company that the car was stolen. He informed us on several occasions that he had filed a stolen car report. We informed him that the car had not been stolen. That at the maximum, it was in the hands of someone to whom he turned it over and that a stolen car report couldn't be filed. He found that to be true because he was unable to file a stolen car report.

Q Did you notify your insurer, through your agent, with respect to the fact that the accident occurred and that a claim or claims might be filed in this matter?

A Yes, sir, as soon as we found out about it and that is what we do in every case.

Q Thereafter, did letters start coming from insurance companies whose insured were involved in the accident?

A Yes, sir.

Q I show you a letter

the letter which you sen

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A Yes, this is one of

Mr. Kiel: I ask th

Exam. Reilly: Mark

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A Yes, sir.

Mr. Kiel: I ask t

Exam. Reilly: Mar

Q I show you a simil

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you sent?

A Yes, sir, these a

reflected in the refer

to even other dates, we haven't put in all of the dates.

Q I have one of a similar type and ask if that again was a similar notice which was sent to your insurance agent?

A Yes, this was one more of the series.

Mr. Kiel: I ask that this be marked for identification.

Exam. Reilly: As 315?

Mr. Kiel: And may I ask the letter of September 10th be marked first?

Exam. Reilly: That will be marked for identification as 314.

Mr. Kiel: And the letter of September 14th marked next.

Exam. Reilly: Marked for identification as 315.

(Respondent's Exhibits Nos. 314 and 315, Witness Zola, were marked for identification)

Q Did you make any further investigation to determine the nature of the third party's claims and the status of them?

A Yes, sir.

Q And when did you do that?

A Well, this was done on a continuing basis during the time period of time from the time we were notified of the accident in July, and it continues to date. Our original report by the witness on the scene was that the accidents were of a minor nature, however, claims do have a way of accruing in these matters and sometimes the amounts claimed are somewhat unusually large for what appears to be the size of the accident and we continually forward to our insurance carrier all of the information in this matter.

Q Did you receive a letter from a representative of the Interstate Commerce Commission toward the end of September in connection with this matter?

A Yes, sir, we did.

Q And did you respond to that letter as requested by writing to Mr. Coggins with a copy back to the Interstate Commerce Commission?

A Yes, sir.

Q I show you a letter dated October 1, 1971, addressed to Frank Coggins, and ask if that is a copy of a letter that you sent to Frank Coggins with a copy to the Interstate Commerce Commission?

A Yes, sir.

Mr. Kiel: I ask that that document be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 316

(Respondent's Exhibit No. 316
Witness Zola, was marked
for identification.)

Q Will you look at Exhibit 316, the third paragraph. Is it a fact, sir, that as of October 1st you had not yet received any claim from Mr. Coggins or the insurance company which might be subrogated to his interest with respect to the damage to the automobile?

A That is correct.

Q After you wrote and indicated that you hadn't received a claim, was one filed thereafter?

A At a subsequent date, yes.

Q Were any other letters received in that matter, particularly from Mr. Tomany requesting a response in connection with this Coggins matter?

A Yes, at the end of November we received another letter from Mr. Tomany requesting a response and additional copies of our original first respons be sent to him because his records didn't seem to indicate that he had a response of that, plus a response to the subsequent inquiry.

Q I show you a letter of one Harry Langley on the letterhead of U.S. Fidelity and Guaranty Company dated September 6, 1971, written to the State Farm Mutual Automobile Insurance Company regarding the Coggins matter and ask if you will tell us how you came to be in custody of this copy, and what it represents in your file?

A This is the insurer of Mr. Coggins. Mr. Langley, who is the adjuster of that company and who is handling that matter, sent us a copy of a letter he had written to one of the attorneys for the claimant and that letter of September 6th informs the third party that Mr. Langley's understanding with Aaacon is that Aaacon has agreed to honor all and any claims coming from the accident as soon as they have sufficient facts to establish the claims themselves.

Mr. Kiel: May I ask that this letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 317

(Respondent's Exhibit No.317
Witness Zola, was marked
for identification.)

Q Did you receive Exhibit 317 from Mr. Langley?

A Yes.

Q Do you have any reason to doubt the statement in the last full paragraph of Mr. Langley's letter that your company had assured Mr. Coggins that you would honor any and all claims coming from the accident as soon as they had been established properly?

A No, sir, that is what we said.

Q Did you hear the testimony of Mr. Coggins when he indicated that you had told him to go to his own insurance company?

A No, sir, that isn't what he said. The record indicates that he was asked that question and then there was an objection made, and then they said to Mr. Coggins "why did you go to your insurance company" and his response was "Because I was mad ".

Q After the latter part of December when this letter, Exhibit 317 was received, had you yet gotten a claim from Mr. Coggins or his insurer?

A No, sir.

Q Did you do anything to -- did you do anything further to attempt to get a claim for money damages so that you could process same?

A Yes, since there was no question in our minds of cargo liability, cargo liability on our part, we wrote to them on many occasions asking them for the amount of the damage that they were claiming so we could close out this case.

Q Did you send this letter to Mr. Langley dated September 30th which I am asking to have marked for identification?

A I did.

Exam. Reilly: Marked for identification as Exhibit 318.

(Respondent's Exhibit 318, Witness Zola, was marked for identification.)

Q Mr. Zola, did Mr. Coggins or his insurance company file a written claim for damages to the automobile up until the date of the hearing in Florida?

A No, sir.

Q At the time that the hearings in this matter took place in Florida in mid January, did you learn anything further about the status of the claim or processing of the claim?

A Up until the time of the hearing?

Q Yes.

A We had written several letters and as I had mentioned with regard to earlier cases, this was another one of the most unusual circumstances where an insurance company does not promptly respond to an offer to pay a claim. There was just silence to our every request.

Q Did you hear Mr. Coggins when he testified about what he had heard from his insurer that legal action was being instituted?

A Yes, sir.

Q And in fact, was such action instituted?

A Upon hearing that we called up our Atlanta office since we had no knowledge of any legal action, and we were informed that as of the time we had called them up, that is, right then at the time of the hearing, when Mr. Coggins stated that, they had not been served with process but since Mr. Coggins had a copy in the court room, that was our first indication that there would be litigation in this matter on the cargo claim.

Q After you received the legal papers, what did you do next?

A We contacted the attorney.

Q Whose attorney?

A The attorney for the US Fidelity and Guaranty, Mr. Coggins' insurance company.

Q And did you correspond with counsel?

A Yes, we spoke with him on the phone and corresponded.

Q And was the requirement that you file an answer to the summons and complaint postponed?

A Yes, sir.

Q And was that by mutual agreement?

A Yes, sir, we indicated to him that we had offered to Mr. Langley to pay this claim if they filed a claim in a reasonable amount and he said that apparently, as a result of several -- well, any way, he stated that he would be happy to settle this claim and wouldn't require us to comply with the legal process.

Q Did you write Mr. Whitney, the attorney in this matter?

A Yes.

Q I show you a letter of January 28th and ask if this is a copy of the letter that you sent to the attorney for Coggins and his insurance company in connection with this matter?

A Yes, after we had discussed the facts surrounding the case.

Mr. Kiel: I ask that this document be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 319.

(Respondent's Exhibit No.319, Witness Zola, was marked for identification.)

Q Do you recall, Mr. Zola, the amount of damages claimed in the legal action?

A Yes, sir, they asserted a claim for $5,200 as the fair market value of the vehicle less $269 salvage value or a net sum of $4,931 plus a few hundred additional for related expenses, but the expenses to the claim for the cargo damage was $4,931 after salvage value reduction.

Q Did you, Mr. Zola, in connection with our conversation with Mr. Whitney, discuss the age and milage on the automobile in question?

A Yes, I told him that Mr. Coggins testified that the car had over 9,000 and he was astounded by that. He told me that he was under the impression that the car was a brand new car and the expression that he used that I paraphrased in the letter because I wanted a record of this, he thought it had just been driven out of the dealer's showroom.

Q Did he inform you that the amount of the claim was based upon what, in fact, they had paid their insured?

A Yes, it was based upon the payment to the insured based upon the fact that the car was new and undriven.

Q In any event, as a result of the information which you gave to the attorney, Mr. Whitney, did the amount that they were claiming became adjusted?

A Yes, sir, Mr. Whitney, the exact expression he used was "it would be a cold day in Hell before I could ask Aaacon to pay that amount". Those were his words. Subsequently the amount was adjusted. He went to the company and got the fair market price of the car and that amount was paid.

Q And did you receive a letter by certified mail from Mr. Whitney making a formal demand on you for a sum less of what the suit was instituted for?

A Yes, once he knew the facts he submitted this letter for the sum of $3,775.

Mr. Kiel: May I ask that the letter of Mr. Whitney, dated February 24, 1972, in connection with this claim, be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 320.

(Respondent's Exhibit No.320,
Witness Zola, was marked
for identification.)

Q Have you formed any conclusion or do you have any reaction to the reason why Mr. Coggins, instead of pursuing the claim with you, went to his insurance company?

A Yes, sir. My conclusion is that because they were not intermittently familiar with the facts, he was able to effect a much better settlement --

Mr. Browning: I object to that, that is speculation.

Exam. Reilly: Objection sustained.

Mr. Kiel: May I be heard before you rule? At the initial testimony of Mr. Coggins, he was asked by Mr. Browning with respect to the following "now, did you have any reaction yourself to a bill of lading that you -- did you look at the bill of lading after it was presented to you by Mrs. McNeily?" "Yes". "What was your reaction to the bill of lading--

Mr. Kiel: I will object.

Mr. Reilly: We have a reaction to a document which somebody presented in his behalf."

Now, Mr. Examiner, this is the same method of getting the type of testimony that Mr. Browning engaged in throughout the hearing and I feel it should be permitted on our side as well.

Mr. Browning: Obviously it is not true.´ Now he is speculating why Mr. Coggins did something --

Exam. Reilly: The objection is sustained.

Q My notes indicate that Mr. Coggins stated that there was a lack of communication between your company and himself, do you recall that testimony generally?

A Yes, sir.

Q Had there been correspondence with Mr. Coggins as well as other persons who were there in his behalf?

A Yes.

Q Who besides Mr. Coggins did you have correspondence with?

A Mr. Coggins, Mr. Coggins' insurance company, Mr. Coggins' attorney, the Interstate Commerce Commission and responses to Mr. Coggins' letters.

Q Now, shortly after the accident occurred, was a request made by Mr. Coggins for the return of items which were in the trunk of the automobile?

A Yes, sir.

Q And did Mr. Coggins acknowledge the receipt of those contents and thank you for taking care of it?

A Yes, on July 15th, he sent a letter to Mr. Donath thanking him for sending the trunk contents.

Q And during that period of time were you working with Mr. Coggins in attempting to settle this matter?

A Yes, mostly through his insurance company which was handling this matter in his behalf.

Q Do you know the basis for Mr. Coggins' statement at the time of the first series of hearings in New York in October of 1971, as a result of which Mr. Coggins said he found out for the first time that you were responsible or liable for the loss?

A Mr. Coggins initially spoke with me on the telephone in the first half of July and at that time I told him that we were responsible for cargo damage claims primarily, and that on the question of liability claims, we would notify our carrier but that the ultimate resolution of that was beyond our direct control. At that time he had informed me that he was taping the conversation and we came to New York, although he didn't testify here, he was present. I asked him at that time if he had the tapes so that there would be no question as to the nature of our conversation, he said well, he would rather not get into that matter with me, and that was my sole conversation with him on that, and then he had testimony of the tapings of the telephone conversations in his Florida testimony.

Q Did you discuss with Mr. Coggins as to whether or not you were liable or responsible for the loss suffered as a result of Mr. Donath's damage action?

A Yes, I indicated to him in New York, as I indicated to him on the phone earlier, that we were primarily responsible for any cargo claim.

Q Had you ever been -- had you ever had any discussions with Mr. Coggins regarding your holding out, that your company had a liability coverage of three million dollars?

A Yes, Mr. Coggins, I spoke with him at the end of the hearing in Florida about that, very briefly. He apparently used the word liability to mean cargo and vice versus and I asked him if after a result of the cross-examination by Mr. Kiel, was it clear and he said it was clear, he understood it.

Q You agree that that is rather a difficult point that a layman might not understand?

A I agree that it is a difficult point that even experts might not understand.

Q Now, would you turn next to Witness Mary Weller. Are you familiar with the matter involved with Mr. Weller?

A Yes, sir.

Q Did you see her and hear her testimony?

A I did.

Q May I just go back two questions and just ask you if after a result of your investigation and your knowledge of the Coggins matter, did you form any conclusions with respect to the handling of the claim for damages which was initially in the form of a legal action by the insurer who was subrogated to Mr. Coggins' rights?

A Yes, sir.

Q Would you please tell us about that?

Mr. Browning: Mr. Examiner, on what is this going to be based, just on the knowledge of a fact of a law suit? That is what it sounds like?

Exam. Reilly: Well, I have listened to all of these as they have gone on before and what it is, is simply a summary of all of the facts in the record. I don't think it adds anything to the record.

Mr. Kiel: It is more than that, Mr. Examiner, it really is the basis of reasonable action to dispose of claims when they occur.

Exam. Reilly: He testified to all the things he did and as to what he thought was a familiarization of the claim. Now, to have him go through a lot of words coming to the same conclusion seems to me to be a waste of time and effort in this transcript.

Mr. Kiel: May the witness answer, Mr. Examiner?

Exam. Reilly: N
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Mr. Browning: M
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Exam. Reilly: I
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Q Now, going back to Mrs. Weller's situation, did you review your file as it related to Mrs. Weller?

A Yes, sir.

Q And could you tell us briefly what was the basis for your denial of the claim for damages that she filed for parts of the automobile that she found to be missing after the car had been received in good order?

A We received from Mrs. Weller a bill of lading indicating that the car had been delivered to her in satisfactory condition, there were no exceptions noted. The claim made by her indicated that the damage was not discovered by her until many days after the car had been in her possession and available to her use and exposed to the potential custody of anybody else who might come along. That is to say, that somebody else could have come along and taken the hub caps. There was no substantiation by her that the hub caps were taken by the driver. A question arose in our mind in light of the fact that the bill of lading that we received, that on the question of hub caps, some doubt was created and some of the people in our company considered the possibility that t he driver may have sought to remove the hub caps but cover up his transgression. After reviewing the bill of lading, we found that if any alterations were made on the bill of lading were made in a way to indicate that the hub caps were on the vehicle when the vehicle started, and if the driver had removed the hub caps, he wouldn't have altered the bill of lading in the way it was, but he would have altered it to indicate that the hub caps were missing at the beginning.

Q Did you feel that something had occurred with the bill of lading where the check marks appeared to have been changed?

A Yes.

Q Were you ever able to determine whether that had occurred?

A No, sir, we spoke to the driver on the phone and he said he knew nothing about it. Furthermore, the totality of the situation was that there were tape recordings in the back of the car which Mrs. Weller had listed and these were highly saleable items and if someone were going to seek to get money on selling of part of its car or its contents, the first place to go would be those tapes. Our conclusion was in weighing this thing up, there was no positive substantiation that anyone connected with Aaacon removed the hub caps.

Q And Mrs. Weller appeared in Florida and what was your impression and reaction to her testimony?

A Well, our impression of her was that if there was any question of it, I would have to resolve in her favor. She was certainly not the kind of person who would make a claim just based on an offhand matter, although she, herself, could not offer in this proceeding, any, what I would call conclusive statement on the issue or even create a prima facie case. We felt that there was no question that this was an honest lady and we paid the claim.

Q Is it a matter of weighing inponderables to determine whether a claim is valid?

A That is correct.

Q And was that one of the problems in Mrs. Weller's case?

A Yes, and the occurrence in many cases I want to make clear, when I say many cases, the vast majority of our cases, claims are submitted and they are settled without anything further taking place. But there is about 25 percent of them where issues are raised and they require the wisdom of a solomon sometimes to ascertain what can be denominated as truth.

Q Have you a copy of your letter dated February 25, 1972 to Mrs. Weller wherein you transmitted to her an amount in payment of her claim based upon the information you had given?

A Yes, sir.

Mr. Kiel: May I ask that copy be marked for identification. I would like to point out that the --

Exam Reilly: Marked for identification as Exhibit 321.

(Respondent's Exhibit No.321,
Witness Zola, was marked
for identification.)

Mr. Kiel: The material in the lower left-hand corner of this exhibit is crossed out and it is for the reason that there was attached to the file a green receipt card and the relation to another matter, it was attached improperly. Just so the record is clear on that.

Q Would you refer next to the testimony of one Mrs. Ferreria given in this matter in Florida?

A Yes, sir.

Q Are you familiar with the background of that claim?

A Yes, I am.

Q And have you investigated the facts relating to that situation?

A Yes, we have. The claim may be known as Pontas Glenn.

Q In connection with that transportation, did you use a driver by the name of Jim Stroud?

A Yes, sir.

Q And do you have a copy of the driver's application in this matter?

A Yes, this is a copy of the front of the driver's application which was sent to us from our California office. This is part of the record we would request from another office in the event that a claim was made.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 322.

(Respondent's Exhibit No. 322, Witness Zola, was marked for identification.)

Q So that the record is clear and that we have a good copy of the bill of lading document, do you have the driver's copy of Mr. Stroud which was made up and used in connection with this transportation?

A Yes, sir.

Q And I ask if that is a copy of the bill of lading F4986, and does that show the condition of certain parts of the automobile?

A Yes, this is the copy that was executed when the car was picked up, it is not the executed copy at destination. It shows the condition we picked up and it is signed by H. H. Young, the consignor.

Mr. Kiel: May I ask that it be marked for identification?

Exam. Reilly: Marked as Exhibit 323.

(Respondent's Exhibit No.323, Witness Zola, was marked for identification.)

Q Will you give us your understanding of who Mr. Young was insofar as this transaction was concerned?

A Yes, sir, Mr. Young was a security officer with Wells Fargo in California and he was visiting some of his family in Florida.

Q Can you tell me who Mr. Stroud is?

A I am sorry, I thought you were referring to Mr. Stroud. Mr. Stroud was the driver.

Q Who is Mr. Young?

A   Mr. Young is one of the principals of Auto Adjustment, Inc. which is the company that repossessed the vehicle for the Ferrerias who lived in Florida, they repossessed it in California from Mrs. Ferreria's cousin who had taken it there without her permission.

Q   In Exhibit 323 there is a condition report and in printed words there is a description of the code that is used. D means dented, S means scratched, P means pitted and X means missing?

A   Right.

Q   Is that the reason for the various letters shown below that describing the condition of the automobile?

A   Yes, sir.

Q   In connection with this automobile, was there some damage to various parts of the body of this automobile when you received it?

A   Yes, sir. And there was, as indicated, extensive damage on the left side of the automobile, the driver's side, including the removal of molding strips, dents, scratches and they are indicated there.

Q   In a situation where your company might receive a car from a repossesser, is it customary for the repossesser to execute the document?

A   Yes, whoever we receive a car from executes the shipping document and when we receive repossessed cars, they are normally in poor condition.

Q When this car was received, were you able to transport it in the condition that it was in?

A No, sir. Aside from the extensive body damage, the car had been run into the ground and it needed at a minimum, tires.

Q Did you hear the testimony of Mrs. Ferreria about the contacts and securing of tires?

A Yes, which occurrs in the normal course of events. If the tires were no good, we ask the owner to replace them and they send us money, and the tires are replaced as a matter of course.

Q There was another witness who indicated later, I believe, LaFrazia, that there was some problem in getting you to replace tires, do you recall that testimony?

A Yes.

Q Do you have any reaction to that?

A Yes, my reaction to that is based upon my investigation is that Mr. Ferreria didn't want to pay for the tires, he wanted us to pay for them and that was the sole issue --

Mr. Browning: Mr. Examiner, I am so confused.

Exam. Reilly: So am I. We have the LaFrazias and Ferrerias, and I don't know what you are talking about.

Mr. Kiel: I am sorry to have confused the record.

Q Mr. Zola, in connection with the delivery of the car, did you determine whether or not the car was involved in an accident?

A The car was involved in an accident.

Q And in connection with your investigation, what was the damage caused by the accident?

A The damage caused by the accident was the smashing of the front head lamp and the denting of the head lamp assembly area.

Q Did you request from Mrs. Ferreria and receive from her, photographs showing the left side of the automobile including the headlamp assembly area which was involved in the accident?

A Just to make it clear, we asked her for photographs of the damage to the vehicle, we thought we would get photographs of the headlamp area, instead she sent us photographs of the left side of the vehicle including the headlamp area.

Q Do you have these pictures?

A Yes, sir.

Q And have you made copies of those pictures?

A Yes, sir.

Mr. Kiel: May I have four pictures marked for identification and I had copies made from the original.

Exam. Reilly: Marked for identification as Exhibit 324.

(Respondent's Exhibit No324, Witness Zola, was marked for identification.)

Q Were the pictures sent to you by Mrs. Ferreria represented to be pictures taken before or after the repairs?

A They were pictures before the repairs but after the delivery.

Q Did you hear Mrs. Ferreria testify that the accident crumbled the left door so that it could not be open on the driver's side?

A Yes, sir.

Q And does an examination of the pictures which are Exhib 324 lead you to the same conclusion?

A No, sir it leads me to the contrary conclusion.

Q In connection with that delivery, did the consignee pay the total freight charges?

A No, sir, she did not.

Q What portion of the total freight charges did she not p

A She had not paid $50 of the total freight charges.

Q Have you ever received that balance of the freight charges?

A No, sir. The reason we did not is that from a review o the file, we felt, from the Motors Crash Book, we felt the cost of the areas that we had damage was in the area of $50. We said you have $50 of ours, then you have $50, so one was offset against the other.

Q As I understand, that is no longer your practice in handling small claims?

A No, I want to make that clear. The Commission has stated in 340 ICC that the amount to be paid to a claimant is the fair amount of the claim less any freight charges outstanding. What no longer is our practice is to have the owner make an adjustment directly with the driver in the event of a damage.

Q And the total freight charges --

A Are always checked and remittance is made.

Q Did you receive an inquiry with respect to the estimated damages signed by Mr. Carl Ferreria through the Better Business Bureau of South Florida?

A Yes, sir.

Q I show you a copy of a letter and ask you if that is one copy of the material you received from the Better Business Bureau and completed by your company and the original of which was returned to the Better Business Bureau?

A Yes.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 325.

(Respondent's Exhibit No.325, Witness Zola, was marked for identification.)

Q Did you receive subsequent to March --

Mr. Kiel: Strike that.

Q Did you receive, subsequent to the time that you received Exhibit 325, a request for information concerning this same matter from the Consumer Protection Division in Miami, Florida in connection with the Ferreria matter?

A Yes, sir.

Q I show you a copy of a response to that agency signed by Bob Maxwell, dated March 16th and ask if you can tell us what that is?

A This was a response to the inquiry of the Consumer Protection Division. At that time we were confused by the number of agencies that were writing us with regard to this claim since the bill of lading was quite clear, in our minds at any rate, as to what the condition of the car was when received by us and our interview with the driver, et cetera indicated the limited nature of the damage which we had done to a already damaged car. However, subsequently we were able to ascertain that Mrs. Ferreria did not understand the condition of the car we picked up.

Q Now, had you --

Exam. Reilly: We haven't marked this yet.

Mr. Kiel: May we have it marked?

Exam. Reilly: Marked for identification as Exhibit 326.

(Respondent's Exhibit No.326, Witness Zola, was marked for identification.)

Q Did you thereafter receive from the Interstate Commerce Commission a copy of a letter that Mr. Carl Ferreria wrote to Mr. Lorusso asking for the Commission's assistance in securing satisfaction of their claim from your company, although the company had formerly declined to pay the claim in excess of the $50 that the consignee had retained?

A Yes, sir.

Mr. Kiel: I ask this document be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 327.

(Respondent's Exhibit No.327,
Witness Zola, was marked
for identification.)

Q Are you familiar with the contents of this letter?

A Yes, sir.

Q Was any representation made to the Ferrerias that you would send an adjuster to the garage to examine the vehicle?

A No, sir.

Q Is it the custom and practice, or is it not, to send an adjuster to examine automobiles which are involved in accidents?

A The custom and practice depends upon the particular circumstance. With the damages to areas where Motor Crash Book indicates that the replacement of the head lamp assembly is $18,and the cost of the refinishing the area around the head lamp assembly were revised by a local adjuster, couldn't be more than $30, it just couldn't be feasible to hire an adjuster. Where there is a dispute concerning a large amount of money, we might send out an investigator to make a determination.

Q With the pictures that you received from the Ferrerias, were you able to secure an opinion from anyone with respect to the damage and the cost of fixing the damage?

A The pictures, together with the statements we had from the driver, and the condition report on the bill of lading, so we were able to eliminate those areas for which we felt there was no carrier liability, and in this regard, what we felt and what we told Mrs. Ferreria was to have the head lamp repaired anywhere. She may have interpreted this to mean have the car repaired anywhere and that is not what we told her. Page 1 of Exhibit 327 was the first indication that we had that she was misconstruing what our obligations were. She used the words there that Aaacon would be paid $50 upon delivery "to us by the car in perfect condition," now, she either thought the car was in perfect condition when repossessed or that we were going to refurbish it. Neither one of those things were true.

Q Did you respond to Mr. Ferreria, with a copy to Mr. Tomany, after receiving Exhibit 327 from the Commission?

A Yes.

Q I show you a copy of a letter and ask you if that is a copy of a letter you sent to Mr. Tomany?

A. Yes.

Mr. Kiel: May I have this marked for identification?

Exam. Reilly: Marked f

Q Exhibit 328, in the sec
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original, on the original is
and did you write that in aft

A Yes, sir.

Q Will you explain why you

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scratched prior to pick up, a
in by mistake, and that is th
that correction for my file.
subsequent letter to clarify
the bill of lading, that ther
condition when received by us

Q Mrs. Ferreria indicated
Ferreria was domiciled in the
been in contact with you ever
able to get any resolution of
whether or not Mr. George Fer

your claims department?

A He was in touch with me only and he was in touch with me on a total of three cases. The first time he called me up and said "I am Mr. George Ferreria, et cetera, et cetera", I told him I didn't have the file present, and that I would call him back, and I did call him back. On the second occasion I spoke to him, I called him back and explained to him what our findings were, that the vehicle was damaged at the time of pick up and Mr. Ferreria indicated surprise at the fact that the vehicle was damaged prior to the time of pick up. I explained to him about the $50 being retained as an offset against the damage to the head light assembly area. This was the tenor of our conversation. He promised me that he would be in touch with the Ferrerias and communicate to them this information because it was all news to him.

Q Did he ever get back to you?

A After the final conclusion, no.

Q Mrs. Ferreria testified --

Mr. Kiel: Strike that.

Q Was a copy of the bill of lading agreement left with Mr. Young when the car was taken?

A Yes, a copy is always left with the consignor.

Q The witness, Mrs. Ferreria testified that she had papers from Mr. Young which showed that the condition of the car was turned over to you --

A She indicated that she had papers that were in the possession of Mr. Forbs --

Q I read you the bottom of her testimony "but Mr. Forbs, of the First National Bank of Hollywood, does have a copy of it. If I would have known that I needed it, I would have gone up yesterday and picked it up." Do you remember that?

A Yes, sir.

Q Since Mrs. Ferreria testified, did you contact Mr. Forbs to see if you could obtain those papers?

A Yes, it seemed inconceivable to us that those papers existed, and we inquired of Mr. Forbs as to whether he had copies, so I was interested in finding out what the papers would say.

Q Did you call first?

A Yes, and then we wrote.

Q I show you your letter of February 25, 1972, to Mr. Forbs of the First National Bank of Hollywood, Florida, is that the letter you sent?

A Yes.

Mr. Kiel: May we have this marked for identification?

Exam. Reilly: It is marked for identification as Exhibit 329.

(Respondent's Exhibit No.329,
Witness Zola, was marked
for identification.)

Exam. Reilly: We will take a recess.

(Whereupon, a recess was taken)

Exam. Reilly: On the record.

Q (By Mr. Kiel) Mr. Zolla, look at the original of Exhibit 329, is the receipt for the mailing of that letter attached to the original?

A Yes.

Q And do you have the return receipt attached to your original?

A Yes, sir, I do.

Q Does that receipt indicate that the letter was delivered properly?

A Yes.

Q Did you ever receive a response?

A Yes.

Q I show you a letter on the letterhead of the First National Bank of Hollywood, signed by R.L. Forbs, Assistant Cashier, and ask if that is a letter that you received in response?

A That is the letter.

Mr. Kiel: May I ask that the letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 330.

(Respondent's Exhibit No.330, Witness Zola, was marked for identification.)

Q What conclusion did you draw from the letter of Mr.

Forbs when you received it with respect to the availability of a report being in existence which was different from that of being in your bill of lading agreement?

A As a result of this letter and my telelphone conversation with Mr. Forbs in which he stated to me that he had never heard or seen such a report, I concluded that none existed, and that Mrs. Ferreria made a mistake.

Q Was there a time subsequent to your letter of -- which is Exhibit 328, that you did not hear from the Ferrerias?

A Yes, sir.

Q For how long didn't you hear from them after that letter was sent?

A I am sorry, I don't seem to have Exhibit 328, and I just want to make sure of my facts before I answer. It wasn't until we contacted her on November 5, 1971 in connection with the fact that her name had appeared on the list, I forgot what exhibit number it was, but the list known as Exhibit A. and we contacted her and asked if there were any questions in her mind. After that we heard not from her, but from her brother-in-law. We felt that since we had answered her in our correspondence to the Interstate Commerce Commission, we felt that the matter was resolved and that she understood our position. By resolved, I mean the claim was paid in the amount of $50 by offset.

Q Now, with respect to the driver of this vehicle, Mr.

Stroud, what did your investigation indicate that he did for an occupation?

A Mr. Stroud was a security policeman with Wells Fargo.

Q Did you hear Mrs. Ferreria testify that when Mr. Stroud drove the car and delivered it to her, she described his conduct or his manner of speaking, or something, as being incoherent?

A Yes, sir.

Q Did you check to see whether Mr. Stroud was incoherent?

A Well, when he called us up and reported the situation with regard to the accident he was not incoherent, which was done contemporaneous with the delivery of the car.

Q Now, having the benefit of the testimony of Mrs. Ferreria and all of the documents that you received, do you feel that Mrs. Ferreria's claim for anything in excess of $50 is proper and should be claimed by you?

A No, sir, I do not.

Q In connection with that matter, was there anything that you omitted to do that you reasonably should have done in responding to Mrs. Ferreria and giving proper consideration to her claim?

A No, sir.

Q Now, would you turn next to the testimony of Mrs. Myrtis Fauntleroy. Did you transport an automobile for Mrs. Fauntleroy toward the end of 1970?

A Yes, sir.

Q And what was the year of that automobile?

A It was seven years old, it was a 1964 Ford.

Q In that connection you say it was seven years old, is that as the term is normally used in the automobile business?

A Well, a car model year normally starts in the fall of the year preceding. Actually, the Fauntleroy vehicle could be up to eight years old, it would be at a minimum of seven years old at the end of '70, beginning of '71.

Q Did you investigate and did you determine the things that occurred in connection with the movement of the automobile?

A Yes, sir. In that case, I felt with the people concerned with that case, myself.

Q And in that connection, sir, what was the driver that picked up her car at her home as she described him, the piano player? Was he a full-time employee of your company?

A Yes.

Q What was his responsibility in connection with that movement?

A His responsibility was to pick up the automobile, check out its condition, present Mrs. Fauntleroy with a condition report for her signature --

Q Did you hear Mrs. Fauntleroy when she testified to this situation?

A Yes, sir.

Q Do you know how it came to be that the automobile which started to be transported from Mrs. Fauntleroy's home in Long Island wound up initially in a garage in New York City?

A Yes, after we assigned the driver to it, the driver could not drive the automobile. The engine was so rough that it was impossible to drive out of New York City. So, it was returned or sent to a storage facility. The -- it was repaired in a repair facility.

Q Was Mrs. Fauntleroy notified of this situation?

A Yes, we notified her child, actually. Mrs. Fauntleroy, throughout this proceeding, had very little contact with us, most of the contact was made by third parties on her behalf, her daughter-in-law said that they didn't want to upset her and I heard that from her attorney as well.

Q With respect to a child, was that a minor child that you are talking about?

A No, it was a son who was an engineer, I believe.

Q Had you been in contact with the Fauntleroys one or more times after the vehicle was put into storage, until it could be repaired?

A Yes, sir, we notified that it was in storage -- in a repair facility, we gave them the number of the repair facility, and told them they could contact the repair facility directly. That repair facility is not owned nor operated, nor do we have an interest in it. The son did, as it turns out, and he was told that certain items had to be repaired, the distributor and one or two other items. The amount of money was nothing major. I think it was under $50 or approximately in the $50 area and we told the son to repair it, pay for it and we would be happy to reship it as we do with many cars which, on different occasions, encounter mechanical difficulties. The son either didn't transmit this information to his mother or failed to comprehend, because his mother, the one occasion that I did speak with her in Florida, indicated that she thought that we were going to pay for the repairs and I made it very clear to her, very soon after the car was repaired, about a week after. We told her at that time you must send up the money and we waited and waited and waited, and in the interim, we were called by her friend, called by her attorney and the situation was explained over and over again. The repair facility never received payment and they wouldn't release the car to us.

Q Eventually did they receive payment from the Fauntleroys?

A Yes.

Q And then was the car turned back to you for transportation to Florida?

A Yes. I might add, just so the record is complete, Mrs. Fauntleroy's people also had conversations with our New York office manager, Mr. Evans, who called me into this because he just couldn't seem to make headway in this matter.

Q Now, when the automobile was delivered to Mrs. Fauntleroy, did she pay the balance of the freight charges?

A No, she did not. The balance of the freight charges were $54 in this case.

Q Now, what was the -- what did the $54 represent?

A The final freight charges due-- $50 and $4 for, I believe, a tank of gas or some item expended pursuant to our tariff for which the shipper was available.

Q In any event, did Mrs. Fauntleory indicate to you why she felt that she shouldn't pay the balance of the transportation charges which were due and owing?

A Yes. The first thing she informed us of was that the car was received in a filthy condition and that she was distressed with the delivery and that it cost her $50 to make the car in a driveable and satisfactory condition to her.

Q Did she ever file a written claim with you for that $50 or did she notify you -- was that in writing that you were notified about that?

A Yes.

Q And was any other claim for damages submitted to you within nine months after the delivery of the automobile was accomplished?

A No, sir, that was it.

Q And then how did Mrs. Fauntleroy's problem come to your attention next?

A Well, we said to her again "You owe us $54, you have a claim for $50 for interior cleaning" and other items connected therewith, I think it was battery cable replacing or something like that. We said we thought you were going to offset the matter and that was the end of it. Again, we found her name listed as a shipper on that exhibit as prepared by the Commission and so we contacted her. We thought there was something we didn't know about and when we contacted her and asked if there were any additional problems of which we were not aware. Again, this was November 5th or 6th, 1971, or just about at the end of a nine month period after the car had been delivered.

Q At the time of the delivery or shortly after the delivery of the car, did Mrs. Fauntleroy write a letter to the Interstate Commerce Commission in which she indicated that the driver of the car was rude to her in making the delivery?

A Yes, sir. This was -- copies were sent to us and this was her response to my letter to which I thought of reopened the matter.

Q I show you a copy of your letter to Mrs. Fauntleroy, dated April 5, 1971, and ask if it is a copy of your letter that you sent to Mrs. Fauntleroy?

A Right, this is the original letter.

Mr. Kiel: I ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 331.

(Respondent's Exhibit No.331, Witness Zola, was marked for identification.)

Q I believe my question related to the driver being rude, but the letter refers to Mr. Evans being rude.

A Right.

Q Was your response with respect to Mr. Evans' alleged rudeness --

A I am glad you said "alleged"; Mr. Evans is just not the sort of man to be rude to people.

Q Why do you say that?

A Well, he is no longer with our company, we terminated his employment on a mutually agreeable basis, but he was just a very soft spoken individual.

Q Your letter, Exhibit 331, refers to a fact that an owner is supposed to provide a full tank of gas and when it is not provided, sir, do you supply that gas and charge it back to the shipper?

A Yes, that is pursuant to our tariff.

Q And was that also the situation that was referred to in connection with the testimony of Mrs. Weller in which she indicated something about having to pay $7 for gas?

A Yes, that would be the same situation and the same justification.

Q Reference is in your letter, Exhibit 331, with respect to something about a stolen car report, would you explain that?

A Yes, Mrs. Fauntleroy, at one time, wanted to have her car reported stolen while the car was not being transported because she did not pay charges on it, and she said you file a stolen car report, and occasionally customers ask us to do that. We informed her of what the unhappy fact of the situation was, that the employees of the storage will not accept stolen car reports from anyone except the registered owner of the vehicle, and they have to file it wherever they are. We have attempted, tried to file stolen car reports just to accommodate the customers when they felt agriefed, but it was to no avail.

Q Did you tell Mrs. Fauntleory that you didn't know where her car was?

A No.

Q Why the request for the stolen car report?

A There was a delay in delivery, apparently and that apparently was the reason for it.

Q With respect to Mrs. Fauntleroy, when was the next time you heard from her?

A As I testified, we didn't hear from her until we made inquiry because we found her name on the list. After this matter we thought the matter was closed because we heard nothing further, and we thought it was closed satisfactorily. However, when her name appeared on the list, we contacted her and again asked that the same kind of letter that has been advised by the Commission here, we have asked is there any further question, is there anything you would like to know.

Q Did you then hear from your insurance company in the latter part of 1971 incidating that they had received a letter from Mrs. Fauntleory?

A Yes, pursuant to our letter of November 5th, that letter reinitiated the situation. She didn't respond to us but wrote to our insurance company.

Q And do you know when she got the information as to your insurer?

A She had that information from the time of the delivery of the car because she had written to the Interstate Commerce Commission and they usually supply that in the ordinary course of events.

Q Would that have been in the spring of '71?

A The end of February.

Q And the first correspondence you received from your insurance company that they had heard from her was --

A This November -- this letter after November.

Q I show you a copy of a letter from you to Mrs. Fauntleroy

dated December 21, 1971, and ask i
sent to her taken from your files?

A   Yes, sir.

Mr. Kiel: I ask that that be

Exam. Reilly: Document marke
Exhibit 332.

(Re
Wi
fo

Q   Does your original copy of the
it a certified mail receipt showin
sent to Mrs. Fauntleroy?

A   Yes, sir.

Q   And did you receive a respons

A   Yes, sir.

Q   I show you a letter from your
to Mrs. Fauntleroy, sending her an
of December 21st, was that sent to

A   Yes, because we hadn't heard

Mr. Kiel: I ask that this do
identification.

Exam. Reilly: Marked for iden

(Re
Wi
fo

Q   I show you a document which ha
Miles Body Shop, estimate --

A

A That may be in the record already, I am not sure. I remember some discussion of that.

Q -- this document, I believe is an exhibit. How do you happen to have a copy of it?

A Mrs. Fauntleroy, in response to our November 5th inquiry, took her car on December 13, 1971, 11 months after she received it and got an estimate of the damage on the car at that time, and included on the estimate are items marked old damage, et cetera, and this is the first claim that we received for body damage in a money amount.

Q With respect to your statement that Mrs. Fauntleroy had information as to the name of your insurance company in the spring of 1971, do you have a copy of a letter received from the Interstate Commerce Commission on March the 30th, which indicates that a copy of this letter was sent to Mrs. Fauntleroy at the same time?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 334.

(Respondent's Exhibit No.334, Witness Zola, was marked for identification.)

Q Is it your statement that despite the fact that you indicated Mrs. Fauntleroy knew from March or April of 1971 as to the name of your insurance company, that the first inquiry made to that insurance company by her, which you are aware, was in December of 1971, some eight or nine months later?

A The answer is yes, but it isn't a matter of our being aware. I know from my conversation with Mr. Joseph DiGiacomo, employee of the American Plan Corporation --

Mr. Browning: I object to this, this is strictly hearsay, Mr. Examiner.

Mr. Kiel: I say that the witness should be permitted to complete his answer.

Exam. Reilly: All right.

A -- that that was the first mention they heard from her. Also, it is their practice in every case to notify us immediately of any claim they receive, and they had made no notification during the entire time in the period March 30, 1971 until the time in December when we received the letter from the American Plan regarding the understanding between us and American Plan regarding claims.

Q In the handling of claims, is it your practice to accept an estimate on an automobile which was not made until some 11 months after the automobile was delivered?

Mr. Browning: Objection, it is leading.

Exam. Reilly: I will let him answer.

A No, sir, not if it is the first indication because we precluded from our tariff and federal law from paying such a claim.

Q Do you remember Mrs. Fauntleroy's claim regarding somebody putting the wrong kind of battery in her car?

A Yes, sir.

Q Did you attempt to investigate the question that the lady posed?

A Yes, sir.

Q And do you remember some comment by Mrs. Fauntleroy with respect to the mileage which was involved in the operation of the car?

A Yes, sir.

Q Did you attempt to find proof or evidence with respect to the mileage on the odometer of the car at the start of the transportation?

A Yes, sir.

Q What did you do?

A We wrote to Mrs. Fauntleroy and asked if she had any evidence whatsoever on either of those items,in as much as she told us she had a bill from Sears showing the prior battery and perhaps it would show the size of the battery, and we never received any substantiation from her at all.

Q When did you write to Mrs. Fauntleroy last?

A On March 1, 1972.

Q Was that letter sent certified mail?

A Yes.

Q What date?

A   March 2, 1972.

Q   Signed by whom?

A   Mrs. Myrtis Fauntleroy.

Mr. Kiel: May I have a copy of that marked for identification, please?

Exam. Reilly: Marked for identification as Exhibit 335

(Respondent's Exhibit No.335
Witness Zola, was marked
for identification.)

Q   Now, in connection with the letter Mrs. Fauntleroy wrote to the Interstate Commerce Commission, there is a reference, and again I am going to ask you not to dig through the documents, but there is a letter from her assuming that you would take care of the repairs and then you would send her the bill after you were finished.

Now, as a matter of fact, sir, what was your understanding of this and a discussion with her representative?

A   We told her son he would have to pay for the repairs, that is what we tell everybody in these situations, that is what our tariff rules provide and it is our understanding that her son informed her, and that she understood it.

Q   Did the bill of lading under which the shipment was made indicate this?

A   Yes, sir, it is on the bill of lading itself.

Q   Was Mrs. Fauntleroy given a copy when the car was picked up?

A Yes.

Q After the car was on its way, was there a delay in making delivery according to your investigation?

A Yes, sir.

Q Did you hear Mrs. Fauntleroy indicate that she believed or had reason to assume that the driver and his wife were living in her car?

A Yes, sir.

Q As a matter of fact, what information do you have as to where Novaks had been staying?

A Well, according to the information we developed, Mrs. Novak had suffered a miscarriage and that they had been staying, subsequent to her recuperation, on the continued transportation --

Mr. Browning: Will you excuse me one second?

Exam. Reilly: All right.

Mr. Browning: Are we going to break soon, Mr. Examiner, I have somebody waiting for me, maybe I was a little optimistic.

Exam. Reilly: As soon as he finished with Mrs. Fauntleroy, we will recess.

Q Did your investigation indicate whther or not the driver had asked --

A There is a question pending which I haven't finished answering.

Q I am sorry.

A The results of our investigation, we found out that the driver was living in a motel prior to the delivery of the car.

Q Did you make any investigation to determine whether or not the driver attempted to secure payment for the first tank of gas which had been filled when the car was received?

A Yes, sir.

Q To the best of your knowledge, was he able to make that collection?

A No, he was not.

Q At that time, pursuant to your investigation, were you able to determine whether or not there was any question as to the condition of the physical condition of the car?

A None was brought to our attention at that time or in a nine month period after delivery.

Q Did you ever speak with the attorney that Mrs. Fauntleroy had --

A By physical condition, I am referring not to the possibility of the interior of the vehicle being dirty, but the exterior of the vehicle being in an accident.

Q Did you ever speak to an attorney for Mrs. Fauntleroy?

A Yes, sir.

Q Did you ever speak with Mrs. Fauntleroy in regard to attempting to dispose of this matter?

A On one occasion and that was very, very brief.

Q With respect to the interior condition of automobiles that are transported by you, with respect to things being left in the cars, do you instruct your personnel with respect to this type of situation?

A Yes.

Q And what is the instructions that are given?

A That the vehicle belonging to the owner is to be tendered to the owner without any property in it belonging to anybody else. Occasionally this instruction is not followed, but that is the general practice of our company. Most people don't like to leave valuable property in somebody else's custody. I believe you asked me with regard to the dirt in the car?

Q Yes.

A The drivers are instructed to deliver the car with a clean interior. However, if the owner wishes to have the interior professionally cleaned, we do have a tariff charge for that and there is a payment made, and the car is professional cleaned before tendered for delivery.

Q Inside and outside?

A Yes, specifically, and one of the shippers cases which have been presented by the Commission has that service been requested or paid for.

Mr. Kiel: That is the end of the Fauntleroy testimony, Mr. Examiner.

APPENDIX 1431

Exam. Reilly: We will recess until Tuesday morning, whatever date that is, Tuesday morning, March 28th, this room at 9:30 a.m.

(Whereupon, the hearing was recessed.)

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BEFORE THE INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

AAACON AUTO TRANSPORT, INC., Investigation and Revocation of Certificate : — DOCKET NO. MC-C-7202

AAACON AUTO TRANSPORT, INC., Petition of Declatory Order : — DOCKET NO. Mc-C-7282 (Sub No. 1

AUTO TRIP USA, INC., : Freight Forwarder Application, New York, : New York — DOCKET NO. FF-359

:

- - - - - - - - - - - - - - - - - - - -x

26 Federal Plaza
New York, New York
Tuesday, March 28, 1972

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 A.M.

BEFORE:

JOSEPH H. REILLY,

Hearing Examiner.

APPEARANCES:

(As heretofore noted.)

- - -

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INDEX

WITNESS	DIRECT	CROSS
Ralph Zola	2002	2083

EXHIBITS

Number Respondent's		For Identification
336	Witness Zola on all.	2003
337		2006
338		2008
339		2010
340		2013
341		2014
342		2014
343		2016
344		2018
345		2019
346		2023
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362		2075
363		2081

- - -

Witness Zola on all.

PROCEEDINGS

Exam. Reilly: Back on the record.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kiel) Would you go next to the testimony of Mrs. Jocelyn Brown. Did you hear her testify at the hearing?

A Yes.

Q Had Miss Brown ever corresponded or contacted AAACON prior -- until just prior to the hearing in Florida?

A No, sir.

Q Did she contact you just prior to the hearing in Florida as indicated on Exhibit 129 where you wrote a letter to her and she put some material on the bottom of the letter?

A Yes, that was the first and only correspondence we had from her.

Q At any time did you receive either from her daughter or herself, a written claim for a stated damage?

A No, sir, not a stated amount of money.

Q Did you check your records to determine whether or not the bill of lading executed by Mrs. Brown contained any exception or indication that there was anything wrong with the automobile when it was received?

A I did and it did not.

Q I show you a copy of the bill of lading, C6461, and ask you if that is the document in question?

A Yes, sir.

Mr. Kiel: I ask that a copy of that document be marked for identification.

EXAM. REILLY: Marked for identification as Exhibit 336.

(Respondent's Exhibit No.
336 Witness Zola, was
marked for identification.)

Q Did you analyze the letter which is Exhibit 130 in this proceeding, a letter from Mrs. Parker, the daughter of Mrs. Brown, with respect to the claimed use of oil and speeds and so forth?

A Yes, I did.

Q Did you find anything in that letter --

Mr. Browning: Mr. Examiner, I will object to this line of questioning. The letter speaks for itself. He doesn't have to interpret the letter for the commission.

Mr. Kiel: I will withdraw it.

Q Have you a copy or the original of this letter which is Exhibit 130 in your records?

A Yes, I do.

Q And have you examined that as well as other documents in your file to determine whether or not there was any professional or mechanical opinion or mechanic's opinion as to the reason for the use of oil in the automobile while in transit?

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A Yes, I have.

Q What did you find?

A Well, Exhibit 130 which was the original complaint letter sent by Mrs. Brown's daughter, complained that there was not enough oil in the vehicle we stated and she stated in her letter on a hypothetical basis that a possible reason for this would be driving at high speeds.

Subsequent to this, in the testimony of Mrs. Jocelyn Brown, the hypothetical explanation became a definitive explanation, that is to say, it became the actual reason offered by the claimant since --

Mr. Browning: Mr. Examiner, I object to this answer. Really, this is a matter of record and the commission can make any conclusion it wants to about this. This witness doesn't have to interpret her testimony or her letter. It speaks for itself.

A Not as far as my claims procedures are concerned.

Exam. Reilly: Mr. Zola, you are here as a witness and not as a lawyer.

Mr. Kiel: Mr. Examiner, again I would like to restate what I have stated previously: That we have to attempt to advise the commission as to the reasoning and the basis for our reasonable and just claims handling and I submit all of this is part of the evidence we must give and if we are going to be precluded we will not be in a position to defend our

Exam. Reilly: I will let him

A The letter states that after a
have been told that an automobile
ant word there is an automobile, d
speed -- Mrs. Parker never stated
her car.

She also stated to us that if
sequent damage to the engine that
them. We never heard from them ag
no damage was done to the vehicle
claimed in light of this letter of
receipt of this letter and after w
time, we closed our files on this
called to our attention that it wa
the shipments brought to light by

Q With respect to this vehicle,

A This was a 1966 Mustang, Ford

Q And this was transported by yo
336, in 1970?

A Yes, that would make it five y

Q Did you in any event, after he
of Mrs. Brown with respect to how
happened, make any further investi
whether there was any basis for th

she had drawn?

A Yes, we did.

Q And would you tell me what you did first?

A We contacted the driver.

Q And what was his name?

A Michael Verdecchia.

Q And did you receive a response from him?

A Yes, we did, we received a letter from him.

Q Do you know what company he was employed by?

A The Fred Harvey Corporation.

Q I show you a letterhead of Fred Harvey, Grand Canyon National Park, and ask if this letter was the response that you received from Mr. Verdecchia?

A Yes, sir.

Mr. Kiel: May I ask that a copy of that be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 337.

(Respondent's Exhibit 337,
Witness Zola, was marked
for identification.)

Q After examining the letter of Mr. Verdecchia, did you draw any conclusion as to the basis of the beliefs or opinions of Mrs. Brown?

A It was our conclusion based on the letter that in fact, there was no evidence of carrier responsibility

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for the claims asserted by Mrs. Brown and this was bolstered by our previous investigation that the car was carrying oil in the trunk at that time, which, in our opinion, suggested, although it was not the final word, that there might have been a prior oil leakage with the engine of which Mrs. Brown may have been unaware.

Q Then I notice in Exhibit 337 that Mr. Verdecchia indicates if he could be of any further service, not to hesitate to contact him.

Did you contact him further after you received the letter which was Exhibit 337?

A Yes, it became our concern that was being considered in these proceedings was not whether or not there was some rational basis upon which our claims were decided which we felt would have been pretty much the same basis as a court review of a demonstrative agency finding. But whether or not we were right or wrong in any particular case.

In light of that, we felt it incumbent upon us to confirm what Mr. Verdecchia said in sworn statements so we obtained from him an affidavit summarizing what he had informed us of in his letter.

Q Did you prepare the affidavit in part based upon the letter which is Exhibit 337 and send it to Mr. Verdecchia for completion and execution?

A Yes, I prepared those portions with which his letter didn't deal and those I left blank for him to fill in.

Q I show you a copy of an affidavit of Michael Verdecchia dated February 25, 1972 and ask if that is such an affidavit?

A That is the affidavit.

Mr. Kiel: May I substitute a copy of that affidavit?

Exam. Reilly: Yes.

Mr. Kiel: I ask that it be marked for identification.

Mr. Browning: I object to the marking of anything with reference to this hearsay evidence, Mr. Examiner.

Exam. Reilly: I have no choice but to mark it.

Mr. Kiel: May I state, Mr. Examiner, that the record has a substantial number of exactly the same type of documents in evidence introduced over my objections at the request of Mr. Browning.

Mr. Browning: Affidavits? I didn't know that.

Exam. Reilly: Well, we are not concerned here with the admission, I am simply marking this as Exhibit 338.

(Respondent's Exhibit 338, Witness Zola, was marked for identification.)

Q What was your conclusion as to the Brown matter after an examination of your claim file and hearing the testimony of Mrs. Brown and getting the further data you developed?

A Our conclusion was that Mrs. Brown had not substantiated the claim that she had made and further, based on our examination we could not find that even absent that substantiation, our investigation did not reveal carrier fault and finally, we were precluded pursuant to the rules of our tariff, the nine month notice provision and the Interstate Commerce Act Section 2011 from making any voluntary payment after the fact.

Q Would you go next to the testimony of a Bert Levine. Have you reviewed the testimony and the records in connection with that claims file?

A Yes, I did.

Q Did you hear Mr. Levine testify in Florida?

A Yes, I did.

Q And did you have a meeting with Mr. Levine subsequent to the hearing in Florida for the purpose of settling the amount of the claim to be paid in connection with the accident that occurred to his car while in your custody?

A Yes, sir.

Q And is Mr. Levine an attorney in New York City?

A Yes, he is.

Q And did he indicate to you why he went to Florida to testify when these hearings were on in New York?

Mr. Browning: I object.

Exam. Reilly: I don't think this is material.

Mr. Kiel: I believe it will be -- well, let me go on to something else.

Q Mr. Levine testified concerning an accident report and certain conversations in connection with that accident report. Do you have a copy of the accident report which you received from your driver in connection with the incident that Mr. Levine testified about?

A Yes, sir.

Q I show you the yellow accident report form with information on the front and also some writing on the back and ask you if that is a copy of the accident report from your file?

A Yes, it is.

Mr. Kiel: May I ask that that document be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 339.

(Respondent's Exhibit 339, Witness Zola, was marked for identification.)

Q Did you ever receive any other accident report from Mr. Herly, the driver?

A We never received nor did we ever request one.

Q Did you make any investigation to determine whether any person in your organization who handles claims ever requested another such accident report?

A I did and they did not.

Q At the time that you undertook to decline the claim of Levine, did you have any information which would show that there was any question about the accuracy or the correctness of the accident in Exhibit 339?

Mr. Browning: Mr. Examiner, gee, that is such a leading question.

Exam. Reilly: Reframe the question.

Q Would you tell us, sir, the status of the claim of Mr. Levine when you denied the claim initially?

A When we denied the claim initially, we had the accident report and we had spoken to the driver on the telephone and he described the accident in approximately the same language that is in the report, which he subsequently filled out and turned in to us. We were not supplied with any subsequent evidence by Mr. Levine or anyone else that the events or occurrences which gave rise to the Levine claim were any different from the facts contained in the report filed by Mr. Herly and that was the basis for our denial at that time.

Q Later did you attempt to secure a police report?

A Yes, we did because of the questions raised by Mr. Levine in this matter indicating that he felt that there was a dispute not as to the legal question on the claim but an actual dispute as to the facts and we felt a further investigation was warranted in that instance.

We obtained such a report at the beginning of

October, 1970, and from the statements contained in that report we proceeded in to substantive negotiations with Mr. Levine because we felt there was now a real question as to whether or not the driver's accident report was really accurate and we felt that there might have been a question of substantial liability on our part with regard to the vehicle.

Q At that time, did you start negotiating as to the amount your company would pay?

A Yes, from that time on, all negotiations between us concerned the amount, not the existence of liability.

Q Did you, from time to time, receive claims both from the Levines and others with respect to the accident?

A Yes, we received claims from the Levines and others with respect to third party liability claims.

Q And did you examine your records with respect to whether or not the claim information was sent to your insurer?

A Yes, we did investigate that.

Q And what did you find?

A That we had in every instance forwarded to our insurance companies, notices to go with the documents themselves, constituting the claims of all parties.

Q I show you a letter dated September 27, 1971 on your letterhead with a "Received" stamp on the copy, and

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ask if that is from your records and is it a copy of your letter that you sent to your insurance agent with respect to this matter?

A Yes.

Mr. Kiel: I ask that a copy be substituted and marked for identification.

Exam. Reilly: Marked for identification as Exhibit 340.

(Respondent's Exhibit 340, Witness Zola, was marked for identification.)

Q Where did you get Exhibit 340 since it has a stamp indicating that it was received from your insurance agent?

A Well, the practice is as follows: When we forward any third party claim or any claim to our insurance agent we make a copy of that forwarding letter for our records. When the insurance company receives it he usually puts a stamp on it and a copy returned to us. This one was retained with the stamp mark on it.

Q Did you subsequently receive another letter in connection with that same accident and -- and on November 23, send out another notice of this further mailing of papers to your insurance agent?

A Yes, sir.

Q I show you a document and ask if that is from your files?

A Yes, it is.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked Exhibit 341.

(Respondent's Exhibit 341, Witness Zola, was marked for identification.)

Q And did you thereafter have another communication in connection with that accident which was also sent to your insurance agent?

A Yes, sir.

Q I show you a letter of January 4, 1972 and ask if that is a copy of your letter in your file showing that such information was passed to our insurance agent.

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 342.

(Respondent's Exhibit 342, Witness Zola, was marked for identification.)

Q Do you know whether or not Mr. Levine was furnished at his request, information by your insurer --

A Yes, I do know and he was.

Q I show you a letter of the Interstate Commerce Commission dated October 28, 1971 and ask if you would tell us briefly what that is and how it came to be

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in your file?

A It's a letter from Mr. Schloer, Chief, Section of Insurance, to Mr. Levine, a copy of which was forwarded by Mr. Schloer to us, stating that Mr. Levine could make a direct claim to our insurance carrier pursuant with our insurance carrier's filing with the commission.

Q With respect to the amount of damages and the price of repairing the damages to the Levine car, did you agree with Mr. Bert Levine as to the amount which you would be required to pay?

A No, sir.

Q Would you explain that, please?

A Well, we thought we had, but apparently we hadn't. We made an offer to Mr. Levine of some 400 odd dollars originally and Mr. Levine said the documents in our possession including the information filled out by his father might not reflect all the optional equipment on the vehicle and we went over all the optional equipment item by item.

AAACON researched the matter with respect to the National Markets Reports as to the current value of the optional equipment and allounces were made for depreciation thereon plus prior damage to the vehicle, and based upon that information, we made a further offer to Mr. Levine of a money amount of just under $600.

I think it was about $595 with all items included and that was at the end of November and we heard nothing further from him, and we thought the matter had been disposed of, based upon that valuation of the vehicle.

Q Will you look at Exhibit 340 and Exhibit 343 and tell us whether or not your insurance was notified as to the Levine claim prior to the letter to Mr. Levine from the Interstate Commerce Commission advising him of the name of your insurer?

A Yes, sir, it was.

Mr. Kiel: I ask that the letter from the Interstate Commerce Commission be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 343.

(Respondent's Exhibit 343,
Witness Zola, was marked
for identification.)

Q Do you recall the testimony of Mr. Levine that he was informed by your insurer that he didn't know about this claim?

A Yes, sir.

Q Does your notice to your insurers depend upon the amount of the claim filed?

A No, sir, we notify them of every claim.

Q Will you tell us why the handling of the photographs was left to Mr. Levine in connection with the

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settlement of this matter?

A Well, initially we felt there was no liability on our part and from the reports, the approximate cause of the accident was a blown out tire or a defective tire, to use Mr. Levine's words. At that time Mr. Levine stated that he was going to undertake an investigation and obtain the photographs. He had the photographs later on and we asked him for them when it came to a matter of substantiation of the claim, and we asked him for them.

It is our normal practice in the case of a complaint where there is an indication that there may be liability on our part, to request photographs to make sure that there is at least a record, a photographic record of the damage to the vehicle. Since Mr. Levine stated that he would get them, we didn't undertake that step, we just stated that we would get them from him.

Q Mr. Levine testified about a letter that he had received from the driver dated October 8, 1971 but such letter was never made available for this record. Do you have that letter of October 8, 1971?

A Yes, Mr. Levine gave me this letter. The first time I received this letter, by the way, was after Mr. Levine testified. That is to say, I didn't know of its existence prior to that time and Mr. Levine indicated to me that the only reason he mentioned it at his testimony was because he thought we had a copy of it and he didn't want to be surprised on the witness stand with it.

Mr. Kiel: I ask that a copy of that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit --

Mr. Browning: I move that that last statement by the witness be struck. These people had an opportunity at the last hearing to cross examine Mr. Levine. It wasn't brought out then and it certainly can't be brought out now as to what Levine told him in off the record conversations after the hearing.

I move that the last response be struck.

Mr. Kiel: Mr. Examiner, this information which came to this witness subsequent to the testimony of Mr. Levine, there is some more and it is some surprising testimony still to come with respect to Mr. Levine, I think it is proper.

Exam. Reilly: Well, I am going to let him answer it or, I will not strike which was the motion.

Mr. Kiel: May I have that marked, please?

Exam. Reilly: Marked for identification as Exhibit 344.

(Respondent's Exhibit 344,

Witness Zola, was marked
for identification.)

Q In attempting to resolve the measurer of damages, will you tell us whether or not you had conversations and written correspondence with Mr. Levine over various items as they related to the damage?

A Yes, sir, we had telephone conversations and correspondence with him on various occasions until the final settlement of the matter, until final determination.

Q Did you write Mr. Levine on November 15th as to an additional allowance that you would allow on the claim because of additional proof he had submitted?

A Yes, sir.

Q I show you a letter of November 15th and ask if that is a letter from your files?

A Yes.

Q Was this sent to Mr. Levine?

A Yes, it was.

Mr. Kiel: I ask that this be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 345.

(Respondent's Exhibit 345,
Witness Zola, was marked
for identification.)

Q When this letter which is Exhibit 345 was sent, did you know that Mr. Levine was ~~going to testify~~?

A No, sir.

Q Did Mr. Levine contact you prior to the time that he was going to testify?

A Yes, sir, he did.

Q And what did he tell you?

A At that time he told us that he was going to testify in Florida and I would prefer to paraphrase his language --

Mr. Browning: Mr. Examiner, I am going to object to the response of this witness, what apparently is going to be his testimony with regard to a conversation made out of court.

As to the conversation before the hearing in Miami, they had ample time to cross examine the witness in Miami. There is no reason for this type of answer at this time.

Mr. Kiel: I submit it is proper testimony of this witness to indicate what took place in a conversation with someone else who is a witness here.

Exam. Reilly: I will let him answer it.

A Mr. Levine contacted us and stated that he was going to testify and he further stated, "I know Ralph Nader and if you just pay off my claim I will not testify." I told Mr. Levine that we could not do that on that basis and we would not do that on that basis. That offer was repeated to me on another occasion --

Mr. Browning: I renew my objection on the

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further ground that Mr. Levine was subpoenaed to appear in Miami and what he may or may not have said to Mr. Zola is immaterial.

Mr. Kiel: Mr. Sand is another person who is here to testify but wasn't called to the stand. Nevertheless, Mr. Examiner, I think it is proper for the commission to consider the reasons and the basis for the witness's appearance and the things that motivated him to say the things that he said. I think it is essential that this type of evidence be in the record.

Mr. Browning: Mr. Examiner, inasmuch as he has mentioned Mr. Sanders, Mr. Sanders was subpoenaed, indeed, but he told me because of personal reasons, he wanted to go home, but he could not appear at the hearing the next day. What this has to do with the witness here or the witness in Miami, I don't know. I will renew the objection.

Exam. Reilly: I am going to let him answer the question.

A As I was saying, this offer was renewed to me during the interim break in Mr. Levine's testimony in Florida. This is what the conversation that there was some reference to by Mr. Levine in Florida.

Q Was there an offer by you prior to the testimony of Mr. Levine to pay what you thought was a proper

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amount on his claim at that time?

A Yes, sir. That occurred in my November 10th letter and it was not until shortly before the hearing that we were informed that this offer was in any way unsatisfactory. I thought that based upon my conversations with Mr. Levine, this offer summarized what was our understanding as to the value of the vehicle and we decided to declare the vehicle a total loss rather than make any repairs because of the cost of the repairs and due to the fact that Mr. Levine's father would not be satisfied with the repaired vehicle.

Q Do you recall the statement by Mr. Levine as to what his value of the -- what his claimed value of the car was for claimed purposes?

A Yes, sir.

Q What was that?

A He made several statements, one of which was $1200, but in subsequent litigation he claimed $826.

Q Now, there was some discussion with Mr. Levine [illegible] by Mr. Levine when he was on the witness stand with respect to litigation which had been brought by him in the Supreme Court, State of New York, County of Kings; do you remember that testimony?

A Yes, sir.

Q Did you receive and were you served with a summons

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and complaint for the amount of $852.15?

A Yes, sir.

Q And do you have a copy of that document here?

A I do.

Q And have you made a copy of the first page which is the summons in that matter?

A Yes, I have.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 346.

(Respondent's Exhibit 346, Witness Zola, was marked for identification.)

Q In the Supreme Court of the State of New York, are papers filed with the court when an action is commenced and process served?

A No, they are retained by counsel until such time as court intervention is sought which may occur either a week or a couple of years after the parties between them have exchanged, summonses, complaints, answers, interrogatories and all pretrial material.

There is no indexing of papers required prior to that time nor are papers filed.

Q When did you first learn of the commencement of this litigation by service of process?

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A We were served at the end of December, December 27, 1971 our service mark is located at the top of the summons which is marked at the top of the exhibit.

Q The words "Stop check" are shown, what does that mean?

A Since this was now in litigation, we didn't want to be served twice on the matter, the checks that were sent to Mr. Levine were stopped, those were the checks that we thought terminated this matter.

Q Did Mr. Levine indicate to you whether the service of this action -- the service of process, Exhibit 346, was done prior or subsequent to Mr. Levine's notice that he was going to appear in Florida?

A This was done subsequent to his notice that he was going to appear in Florida.

Q Did you meet with Mr. Levine subsequent to January of 1972 in an effort to resolve the small differences in the amount you had offered and that Mr. Levine was now claiming?

Mr. Browning: I object to the characterization by the attorney of the words --

Mr. Kiel: I withdraw the word "small."

Q The differences.

A Yes.

Q What was the difference?

A He was claiming $852, $826 of which was damage plus other expenses related to his expenditures in substantiating his claim which made it $852. We had offered him just under $600 so the difference at that time was approximately $250.

Q And what was the settlement figure that was -- that ultimately settled the claim?

Mr. Browning: I object to that.

Q Did you ever settle the claim?

A Yes, we did.

Q For how much and when?

A We settled the claim for $705 and we settled it during February, 1972.

Q When the matter was settled, did Mr. Levine give you a statement under oath as to the facts as he understood them as the matter progressed?

A Yes, in the settlement of this we made our entire files available to Mr. Levine to show him the basis upon which we had declined to settle -- and the offer of settlement --

Mr. Browning: I object to this being marked, Mr. Examiner. This witness is not here, this is gross hearsay evidence and I object to it even being marked at this time, any reference being made to it.

They could have brought the witness in to testify, he is right here in New York City if they wanted him.

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Q Mr. Zola, I show you an affidavit and ask you to identify it, please.

A It is the affidavit that Mr. Levine executed at the settlement and during the course of the settlement with us.

Mr. Kiel: I ask that a copy of this be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 347.

(Respondent's Exhibit 347,
Witness Zola, was marked
for identification.)

Q What information had your company received from the driver with respect to the cause of --

Exam. Reilly: This is already in the record several times, Mr. Kiel. We have his report, we have testimony on it.

Q Would you refer next to the testimony of witness -- well, before that, let me just ask you this: Based on your examination of the Levine claim, what conclusion did you draw with respect to the handling of the matter by your company?

Mr. Browning: I object, Mr. Examiner, repetitious.

Exam. Reilly: I will sustain that. All we are doing is prolonging the record. I don't need the summary and the commission doesn't need the summary.

Q With respect to the transportation of the automobile

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of Emely Raze, have you familiarized yourself fully with the matter?

A Yes, sir.

Q And did you hear the testimony of Mrs. Raze when she testified?

A Yes, I did.

Q Do you know whether the road driver or some other person picked up her automobile in New Jersey?

A Mrs. Raze --

Q Or in New York, I should say.

A Mrs. Raze' car was picked up by a professional driver who picks up cars and returns them to the storage point of our company in New York.

Q I show you a freight bill order form in connection with that automobile and ask you if that is the document which is in your file?

A It is.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 348.

(Respondent's Exhibit 348,
Witness Zola, was marked
for identification.)

Q When was this freight bill received by your company?

A This freight bill was given to the pickup man when he picked up the vehicle together with a check for the initial part of the transportation charges.

Q How do you know that?

A Because we have internal documents of our company showing when the initial charges were received and when the payment was received and it is also indicated on the bottom of the freight bill in code.

Q Will you explain that, please?

A When we send out the sales literature of our company, we send out a freight bill order form together with a car owner's copy of the order form.

The car owner retains the copy and the original, the freight bill order form which is the exhibit is supposed to be returned to us with the payment. Now, it indicates on this freight bill order form that the front payment was received with the freight bill order form on January 27, 1970, which is the front payment of the pickup of the vehicle.

The total price for the transportation was $129. $79 was to be paid at the time the car was picked up by our professional pickup man. This $79 was received by the professional driver, the pickup man on January 27, 1971. This is the reason that we send out a professional driver. In the event that we don't receive the initial payment, we can't trust a casual driver with it, so we sent out a professional for that reason.

Q This money would be given to the pickup driver at pickup points?

A By Mrs. Raze; yes.

Q Was there any other information given to your company with respect to the contents of the trunk of the car besides what is on the right side of Exhibit 348, possible small packages before tires --

Mr. Browning: I will object until he qualifies to whom in the company. When he says, "the company received notice" --

Mr. Kiel: I will rephrase the question.

Q Did anybody, to your knowledge in your company, receive any knowledge as to the contents of the trunk other than what is on Exhibit 348?

A No, sir, we did not.

Q Do you have from your records a copy of the bill of lading agreement D 6515, used in connection with this movement?

A Yes, sir.

Q I show you a copy of that and ask you if that is the record from your file?

A It is.

Q I ask that that be marked for identification.

A Marked for identification as Exhibit 349.

(Respondent's Exhibit 349, Witness Zola, was marked for identification.)

Q Would any purpose be served in listing on Exhibit 349 the same information which was listed on Exhibit 348 when both documents were turned over to the pickup driver at the same time?

A Yes, sir, there would be.

Q Do you know why then that there is no listing made of the luggage in -- on the bill of lading agreement?

Mr. Browning: I object to that unless he establishes the basis for that testimony which the witness is about go give and he hasn't done that yet, nor has he laid the foundation.

Exam. Reilly: Well, if you can lay a foundation, go ahead, Mr. Kiel.

Q Have you familiarized yourself with the details of this Raze matter?

A Yes, sir.

Q Do you have any opinion as to the reason why the luggage listing is not on Exhibit 349 as well as Exhibit 348?

A I can assume that Mrs. Raze having --

Mr. Browning: I object to this assumption, Mr. Examiner. No foundation has been laid yet.

Exam. Reilly: He is just speculating. If he knows why it wasn't let him state so.

Mr. Kiel: Mr. Examiner, my argument is the same type of an assumptions were made previously --

Exam. Reilly: Mr. Kiel, I have made a ruling and I don't want this kind of thing in the record. I have listened to more than enough of it.

Mr. Johnson: Mr. Examiner, may I say something at this point? The last two exhibits are the same as other exhibits we have had.

Exam. Reilly: I have spoken to Mr. Kiel about that and he said he has tried to avoid that thing.

Mr. Johnson: Exhibit 349 is identical to Exhibit 128 and 349 is identical to Exhibit 125.

Exam. Reilly: I told Mr. Kiel that I don't want this in the record. He is preparing these.

Mr. Kiel: Mr. Examiner, I am sorry, it was intended that this not occur but it has occurred.

Q Do you know the result of your investigation whether or not there were any paying passengers carried on that automobile?

A There were none.

Q Do you know who arranged for the automobile when it became inoperable in Florida to be used to a service station?

A Yes, our manager in the West Palm Beach office, Mr. Meeker.

Q As part of your investigation of the claimed missing luggage or disappearance of the luggage, did you communicate with the attorney for Mrs. Raze with respect to this?

A On many occasions.

Q Have you brought to the hearing any letter showing this communication was taking place?

A Yes, sir.

Q I show you a letter of April 22, 1969 and ask if that was a letter from your files sent to Judge Share?

A Yes, it was.

Mr. Kiel: I ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 350.

(Respondent's Exhibit 350,
Witness Zola, was marked
for identification.)

Q Did you make any investigation with respect to the alleged loss of hub caps missing from the vehicle?

A Yes, sir.

Q And in that connection did you receive from the insurance company for Mrs. Raze, information about the matter?

A Yes, sir.

Q I show you a copy of a letter dated March 3rd, on the letterhead of Allstate addressed to Mrs. Emely Raze and ask you if you would identify that letter?

A This is what Allstate sent to us at our request concerning the payment made by them on the hub caps and their denial of her claim for engine damage.

Exam. Reilly: Do you want it marked?

Mr. Kiel: May I have it marked for identification, please?

Exam. Reilly: Marked for identification as Exhibit 351.

(Respondent's Exhibit 351,
Witness Zola, was marked
for identification.)

Mr. Browning: I can't read this thing at all.

Q It's a short five lines, will you read it to make sure our copies are correct?

A "We are enclosing our draft in the amount of $28.86 to cover the four hub caps missing from your vehicle. We have made an inspection --"

Mr. Browning: Wait a minute, please, just slow down.

A I'm sorry.

Mr. Browning: O.K., go ahead.

A "-- we have made an inspection of your engine at the shop in West Palm Beach. The damage is a result of mechanical breakdown and excluded under your policy, very truly yours."

Q Now, did you know that the insurance company had inspected the car before it was turned over to Mrs. Raze after the breakdown occurred?

A Did we know that?

Q Yes.

A Yes, we knew they had made an investigation.

Q Did you hear Mrs. Raze' testimony with respect to that?

A Yes, sir.

Q Insofar as your company is concerned, do you hold out responsibility for damage to an automobile which results from a mechanical breakdown?

A No, sir, we do not.

Q Mrs. Raze questioned whether or not you were giving proper attention to the handling of the claimant and whether you were corresponding with her attorney so he would be fully apprised of your position.

Do you remember that testimony?

A Yes, sir.

Q Can you tell us whether or not you did have such correspondence with the attorney for Mrs. Raze in an effort to resolve this matter and others?

A Yes, we did, extensive correspondence.

Q Was Mrs. Raze one of the persons with whom you corresponded in this period?

A Yes, we did, but mostly with her attorney because he was the one who corresponded with us.

Q I show you a letter of April 17, 1970, on the stationery of Judge Share and ask you what that is?

A That is a letter sent to us by Mrs. Raze's attorney who apparently is a judge.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 352.

(Respondent's Exhibit 352,
Witness Zola, was marked
for identification.)

Q Will you please explain the purpose of this letter?

A Yes, this was --

Mr. Browning: I object to that.

Mr. Kiel: I will withdraw it.

Q Did you respond to this letter after you received it?

A Yes, our earlier exhibit, 350 is our response to that letter. The day we received the letter we responded to it.

Q Did Judge Share, subsequent to your response of April 22, contact you again in May?

A Yes, he did.

Q And did you respond to that contact?

A Yes.

Q And did you notify him concerning your position with respect to the claim as it related to personal effects?

A Yes, we had asked him if there was any listing of the luggage pursuant to our tariff rule and he stated that there wasn't and then he sent us a list of what Mrs. Raze was alleging was in the automobile and then we responded to that, explaining our position with regard to that.

Q Ask that if the letter which is in front of you is a copy of the letter of Zola and Zola to Judge Share?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 353.

(Respondent's Exhibit 353, Witness Zola, was marked for identification.)

Q Is there any policy in your company to inhibit the listing of luggage or personal effects carried in a vehicle?

Mr. Browning: I object, it is a leading question.

Exam. Reilly: I'm sorry, I didn't hear the question.

Mr. Kiel: May I restate it?

Q Will you tell us whether or not you have any policy with respect to advising the customer to list or not to list personal effects?

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A Well, we advise them to list it, put it on the freight bill and we provide a space in the bill of lading and we ask them to please state it on the bill of lading pursuant to rules of the ICC.

Q In addition to the correspondence with Mrs. Raze and her attorney, was there also a need to communicate with other public officials in connection with this matter as a result of contacts with them by Mrs. Raze?

A Yes, Mrs. Raze contacted others and we had to correspond with each one and explain our position which we did.

Q I show you a copy of a letter addressed to Mr. Louis Lefkowitz, Public Defendar's office, and ask if you can identify that?

A This is a letter sent to us, that is a letter of a letter -- well, this is a copy sent to us which is a copy of a letter sent to Mr. Lefkowitz with copies to the Interstate Commerce Commission by Mrs. Raze's attorney.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 354.

(Respondent's Exhibit 354, Witness Zola, was marked for identification.)

Q Do you know a person in government in New York by the name of Louis Lefkowitz?

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A Yes, sir, he is the Attorney General of the State of New York.

Q Now, how did you get a copy of this letter?

A Mrs. Raze -- excuse me, the judge, Judge Share, her attorney, sent us a copy of this letter.

Q And what did you do when you received this copy?

A Well, in light of the fact that it stated that she didn't have the bill of lading and other items in it which we felt were misstatements, we responded to it.

Q Did you also have communication with a respresentative of the Interstate Commerce Commission about this matter?

A Yes, sir.

Q I show you a copy of a letter dated August 12, 1970, signed by you and ask if you would identify that?

A This is a copy of a letter in our files sent to Mr. Marvin Campbells of the Interstate Commerce Commission.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 355.

(Respondent's Exhibit 355, Witness Zola, was marked for identification.)

A The original had our enclosure of June 3rd, which is the letter to the attorney, Norman Share.

Q Did you continue to investigate this matter to attempt to determine the reason for the failure of the engine of the motor vehicle in question?

A Yes, sir.

Q In that connection, did you receive a copy of a statement from Mr. Barney Edwards in that connection?

A Yes.

Q Who is Barney Edwards so the record will be tied in with the earlier testimony?

A Barney Edwards is Barney of Barney's Repair Service where the vehicle was repaired.

Q How did you get Mr. Edward's statement?

A Mr. Edwards' statement was taken by Allstate which is Mrs. Raze's insurance company and they forwarded it to us.

Q I show you a copy of a document and ask if that is what you just identified?

A Yes. This is the enclosure of Barney Edward's statement.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 356.

(Respondent's Exhibit 356,
Witness Zola, was marked
for identification.)

Exam. Reilly: Back on the record.

We will take a short recess.

(Recess was taken.)

Exam. Reilly: Back on the record.

Q Will you tell us whether or not the receipt of the information in Exhibit 356 confirmed or disputed the information which you had previously had as a result of your investigation?

A The information in Exhibit 356, especially that indicating that the cause of damage was the water pump leak confirmed the results of our information.

Q Did you confirm the claim that Mrs. Raze had with her insurance company as part of your own investigation?

A Yes.

Q Did you find out anything with respect to a claim for personal effects?

A No claim for personal effects, only for hub caps.

Q Now, do you know whether under her policy she could have made such a claim?

A She could have.

Q Did you investigate the size of the trunk on the 1966 Mustang in question?

A Yes.

Q What did your examination indicate?

A The trunk in question on that vehicle has less than nine and a half cubic feet of space.

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Q Did you hear Mrs. Raze's testimony about two tires which were in the trunk?

A Yes, sir, and we got the dimensions of these tires and with the inclusion of the tires in the trunk, the available trunk space is slightly under two and a quarter cubic feet of space for all other contents.

Q Did you hear Mrs. Raze's testimony as to the size of the picture and the frame and the size of the lighting fixture and so on that she claimed was in the trunk?

A Yes, sir.

Q What is your position with respect to the validity of her claim?

A Our position is --

Q For personal effects.

A As to the personal effects, the items to which she testified and the further items which she listed which included water pitchers, a man's attache case could not possibly have fit into the space in question.

Q Did Mrs. Raze pay the entire freight charges due on the transportation of her vehicle?

A No, sir, she offset $50 of it.

Q And with respect to that $50, what was your position?

A Our position was that they covered any missing contents up to the limits of our liability to our release rates --

Q Did you hear the testimony of Mrs. Raze as to the condition of the interior of her vehicle when she received it back from Barney's after the motor repair was completed?

A Yes, sir.

Q Do you have any comment with respect to that?

A Well, she stated that the interior was dirty. The comment I can make is that we were and we are very dissatisfied when a car is delivered dirty. She didn't pay our tariff charges for the cleaning of the car so the car wasn't cleaned. With regard to the property in her car, I believe these should not have been in her car and that they were properly removed by her.

Q In connection with your company's policy, do you pay money damages for the leaving of debris by a driver in an automobile?

A If debris has damaged the automobile we will pay money damages. If the person has paid for interior cleaning services we will undertake to absorb the cost of those cleaning services and provide them.

Q I assume then in other instances you would not?

A In other instances we would not, that is correct.

Q With respect to the Exhibit 352, the attorney for the shipper indicates the possibility of litigation and Mrs. Raze indicated that her attorney told her that he thought she had a good case. Now, I ask you, sir, was any litigation ever begun by Mrs. Raze and her attorney in this matter?

A No, sir, they wrote to our cargo insurance company, the American Claim Corporation. The American Claim Corporation made a declination of their claim on the same basis as we did, firstly with respect to --

Mr. Browning: I object, Mr. Examiner. There is no support for this, there is no substantiation of it and he is simply testifying as to what somebody else has done --

Exam. Reilly: I will sustain the objection.

Q Do you have any knowledge as to the position taken by your insurance company with respect to the claim of Mrs. Raze?

A Yes, I do.

Q Will you tell us what that is?

A Yes, Mr. Joseph Digiacomo of the American Claim Corporation informed me that they had declined the claim first on the ground as to the mechanical damage to the car, a leaky water pump and secondly, as to the claim of trunk contents, Mrs. Raze had failed to substantiate that such contents were in the car or that they were an item of our liability.

That was in answer to your question about whether or

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not litigation was commenced and the answer was that after he wrote to them he did not commence any litigation.

Q In Exhibit 354, a letter by Mr. Share to Mr. Lefkowitz, there is reference on the last two lines of the first page to the effect that Mrs. Raze signed a bill of lading without being able to see it and did not see the document until a week after she relocated in Miami. I also refer you to Exhibit 349 which is the bill of lading agreement and ask you, sir, is it customary that a copy of the bill of lading agreement is left with the car owner when she signed your copy?

A Yes, sir.

Q And did Mrs. Raze state in her testimony that she had received such a copy when the car was picked up?

A Yes, she did.

Q With respect to the driver of this automobile, do you know whether or not he ever drove for your company before?

A I believe he had driven for our company before.

Q Had there been any complaints with regard to his services?

A No, sir.

Q Was your company ever furnished with a copy of any repair bills with respect to the cost or repairs to the automobile in question?

A No, sir.

Q There was some statement to the effect that the car had been checked and was in perfect mechanical condition before being turned over to you. Had a copy of a bill for that service ever been supplied to you to attest to that fact?

A No, sir, it had not been.

Q In connection with the many automobiles that your company transports, does it occur from time to time that cars which were in good condition that were tendered to you, break down in transit?

A Yes, sir.

Q And is that part of the business where you drive the cargo --

A Yes, sir, when you say the car is in good condition, they are in apparent good condition. In some cases the parts are subject to wear and tear which is not readily available from inspection and in many cases, the items of wear and tear occur which inspection would not disclose in any event.

Q Would you go next to the matter of LaFrazia. Did you Did you hear the testimony of Mr. Joseph S. LaFrazia and then the testimony of his father, Joseph La Frazia, Jr. when they appeared in this proceeding?

A Yes, sir.

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Q And are you familiar with the material and the situation concerning which they testified?

A Yes, sir.

Q What type of automobile did you transport for Mr. La Frazia?

A A 1967 Corvette. That is to say, a car that was described to us as a Corvette but apparently had been built by Mr. La Frazia's cousin.

Q Was there any indication on the shipping document that showed that the vehicle had been modified for racing or any other purpose other than normal use?

A No, sir, there was no indication.

Q Had you received any advice that the suspension of the car had been modified so that the body was a different height from the ground than the stock model of the car?

Mr. Browning: Mr. Examiner, I object to that unless he can establish that that was the case.

Mr. Kiel: This is a preliminary question and --

Mr. Browning: He has to establish the foundation for it, Mr. Examiner.

Exam. Reilly: Go ahead and establish the foundation.

Q Did you make any investigations as to any modification of the vehicle?

A Yes, sir, we made extensive investigations.

Q What did you discover?

Exam. Reilly: Well, this is an after the fact inspection, I assume.

Q Was it after the car was received?

A This was after the car was received, transported and the claim was served that we made a further investigation as to the nature of the vehicle. And just to lay it in sequence, the investigation was commenced during the time within which repairs were effected on the vehicle and there was a dispute with the La Frazia's concerning the re-transporting of the vehicle.

And the investigation revealed that the undercarriage of the body had been modified and was brought very low to the road --

Mr. Browning: Mr. Examiner, I still object to this on the ground that we still haven't got a foundation laid for his testimony.

Exam. Reilly: We don't know who did it or how it was done.

Q Would you explain how you investigated this?

A In the course of the claim, the litigation which generally arose in the claim, we made inquiry from the La Frazia's among others as to the nature of the vehicle and the description of it and we were provided with a list of some of the modifications which occurred which indicated that the undercarriage of the body had been closer to the ground and in addition --

Mr. Browning: Mr. Examiner, excuse me. I object to this on the ground that this is hearsay and it is not the best evidence. We don't have these plans or specifications here before us and that would be the best evidence in this matter.

Mr. Kiel: I think it is proper testimony.

May the witness continue?

Exam. Reilly: No, not on the basis of what I have heard so far, he may not.

Q Mr. Zola, did you, in the course of litigation, develop through interrogatories under oath taken of Mr. La Frazia, Jr., concerning the modifications of the car?

A Among other items, yes.

Q And do you have a copy of the signed interrogatories signed by Joseph S. La Frazia, Jr. and Joseph La Frazia Senior and also by the attorneys for those people?

A Yes, sir.

Q And I show you that document with the attachments and ask you if that is the document that you have referred to?

A That is.

Mr. Kiel: May I ask that a copy of those

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interrogatories and the attachments be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 357.

(Respondent's Exhibit 357, Witness Zola, was marked for identification.)

Mr. Browning: Mr. Examiner, I would like to ask that we take a minute here so we can look at these things before he goes any further.

Exam. Reilly: Yes.

Mr. Browning: I am ready to go ahead. I renew my objection. I don't believe there is any support in here regarding his clearance --

Exam. Reilly: I know, I didn't find any either.

A I can point it out.

Q Will you do so?

A It was not only from Exhibit 357, but from Mr. La Frazia himself. In Plaintiff's Exhibit number 2N Exhibit 357 which shows some of the modifications made by Mr. La Frazia's cousin, under the chassis items 3 and 4, it indicates the front of the car and the rear of the car was lowered. The front springs were cut, the language is H.D. front springs cut one inch.

Bolts lowered one and a half inches. Item 8, front and rear wheel alighments set up for racing which tips the car forward for purposes of air clearance and finally, item 1 is the inclusion of blue streak tires on the vehicle which Mr. La Frazia indicates in Exhibit 357 he had erroneously referred to in his testimony before the commission as blue dot tires, but they are blue streak tires which are thin wall tires which have to be reinflated every two days.

Mr. Browning: Mr. Examiner, I don't know what this thing is, but I submit that the best evidence here is Mr. La Frazia to come back here and explain as their witness relative to any modifications relative to his car with regard to blue streak or blue dot tires.

I don't even see Mr. La Frazia's signature on here.

Mr. Kiel: Just look, it is on the end of the statement, two signatures, Joseph S. Jr. and Joseph Senior.

Mr. Browning: All right, I see that.

Exam. Reilly: Mr. Kiel.

Mr. Kiel: Mr. Examiner, we have a situation and I am really surprised that it is occurring. We are attempting to put in evidence -- well, let me say it this way:

When these questions were asked of Mr. La Frazia on cross examination and we attempted to elicit certain of this information, he withheld certain of these facts. We were able to secure these through the interrogatories

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and we didn't have such information in the hearing.

Mr. Browning: He is talking about his testimony of what is contained in Exhibit 357. I object to his interpretation of what a racing setup is.

Exam. Reilly: Well, he hasn't qualified or the -- he hasn't been qualified as to what the effect of tires are, you are not going to ask him these questions.

Q Well, Mr. Zola, have you made any investigation with respect to the racing tires?

A Yes, sir.

Q And will you tell me with whom and how you made such an investigation?

A We contacted the Goodyear Corporation.

Q Were they the manufacturer of the tires in question?

A Yes, sir, and they put us in touch with the only distributor -- there are two distributors in the United States, one on the East Coast named Al Pensky, and one on the West Coast. I contacted Mr. Pensky and spoke to him.

Q Did you do this in the regular course of your duties?

A Yes, sir.

Q And did you secure from Goodyear a pamphlet setting forth information and details concerning the blue streak speedway special racing tires?

A Yes, sir.

Q And the prices for those tires?

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A And the specifications of them as well.

Q I show you a yellow document and ask you if you will identify that?

A That is the original Goodyear specifications sent to me which we have just discussed.

Mr. Kiel: May I ask that that document be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 358.

Mr. Kiel: I substitute a copy for the record.

(Respondent's Exhibit 358,
Witness Zola, was marked
for identification.)

Q In the course of your investigation with respect to the tires on the vehicle tendered to you, what did you determine the tire was?

Mr. Browning: Now, Mr. Examiner, this investigation, he has testified was made in the regular course of his duties. Now, I submit that this investigation might have been made in connection with Mr. La Frazia's testimony after the fact and not in connection with Mr. La Frazia's claim. So I submit any information that this witness is going to give us concerning the results of his investigation in the nature of hearsay is inadmissible.

Mr. Kiel: Mr. Examiner, do I understand that Mr. Browning's position is that if after a witness testifies, the other side undertakes an investigation, that that is inadmissible in this proceeding?

Mr. Browning: Of course not, but any hearsay evidence is certainly inadmissible and I maintain that all the way through, I maintain my objection that hearsay is inadmissible.

Mr. Kiel: If we are not permitted to defend ourselves and consider that the regular course of our business, then I don't understand what due process is any more.

Mr. Browning: Why don't you bring in the proper witness, Mr. Kiel, he is located properly, as I understand.

A He is located in Pennsylvania.

Exam. Reilly: Would you stop talking, Mr. Witness, you are not a lawyer here, you are a witness here.

Mr. Kiel: The record also clearly indicates that it is part of this claim where a lawsuit was started --

Exam. Reilly: Well, I am going to let the testimony in. I must say that I am at a loss as to what 358 is supposed to demonstrate.

Q Would you demonstrate first what Exhibit 358 demonstrates in connection with your investigation of the tires?

A On Page 3 of 358 it says that these tires are illegal for use on public highways.

Q Will you point it out a little more clearly, I don't see it at first reading.

A Yes, under "Warranty policy" it says it is illegal to sell these tires for use on public highways.

Q Does it say they are illegal for street or highway use?

A Yes, right under "General information" in bold print.

Q Were these the tires that were on the car that was tendered to you in California by Mr. Naves?

A Yes. Mr. Pensky said that these are thin wall tires that must be inflated on a daily basis and the failure to inflate will cause a further lowering of the chassis.

Q When representatives of your company determined the type of tires that were involved, what did they do?

A We requested from Mr. La Frazia and from his father that the tires be replaced with ordinary highway, street tires and I discussed this with Mr. La Frazia's mother and the nature of our conversation was, 'Will you replace the tires?" And she said, "No, you replace them and when the car comes to New York we will pay you." I told her that that was not the way we conducted our business. It was her responsibility to replace the tires and make the car safe. I sent her a letter to place this on the record because I felt there was more trouble coming in this matter.

Q Now, I refer you to Exhibit 357, Exhibit 1 thereto

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and ask you if you will identify that letter?

A This is the letter I sent Mr. La Frazia which in his testimony in the interrogatories he admits receiving.

Q Did you make any further investigation to find out why there was any other reason why Mrs. La Frazia would not pay for tires when they had to be installed?

A Yes, sir, during the course of our interrogatories Mr. La Frazia, Sr., who was the one who was paying for all of this, all the repairs, indicated that he did not have the money to put into his son's car to make the repairs of the equipment requested and --

Mr. Browning: Excuse me.

Mr. Examiner, he said in the course of interrogatories. Unless he can point out that point on Exhibit 357, I will have to object.

Q I refer you to Page 2 of the top of the interrogatories, will you read the first question and answer?

A "Question, is it also true that you did not have sufficient funds to replace these heavy duty parts?" "Answer: Yes."

Exam. Reilly: Well, this is the testimony of the son, you said it was the testimony of the father.

A Yes, sir, I was about to say that the way I was able to frame these questions was through a discussion that I had with the La Frazia father and son and the father

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informed me that he could not pay for the parts and in light of the fact that we wanted to keep this set of interrogatories, the son answered what had just been stated in our presence by the father and they had an attorney there at the time.

Q Does it happen from time to time that in the course of transport you have to have tires replaced because of one reason or another?

A Yes.

Q And if Mr. La Frazia had the tires changed and paid for the new tires that were necessary, would you have transported the car?

A Yes, sir, and we so indicated to him and his whole family on many occasions.

Q Did a condition occur while the car was being transported that there was a breakdown and the car did not operate properly?

A Yes, sir.

Q And what did your driver do with the car then?

A The car was taken to an auto repair place specializing in racing and sports cars.

Q And was the car repaired at the cost of the La Frazia's?

A Well, in two parts. First Mr. La Frazia, Sr. indicated to me that he asked them to make the minimum repairs

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and they did that, they took it out and road tested and found that it was not good, and there were further repairs made.

Q In the course of your investigation did you determine whether or not this would be considered by you to be a mechanical defect or not?

A Yes, there was no indication at any time that there was anything in the nature of the repairs to the vehicle that were other than ordinary wear and tear and the result of the low slung body and the potential that that had for damage.

Q After the car was repaired and made ready, was it able to be transported?

A No, it was not able to be transported because it had on the tires that were unsafe.

Q Eventually was this car taken from your custody and turned back to the La Frazia's for their subsequent transportation?

A Yes, sir, they transported it by railroad.

Q Now, after the letter of January 12, which is Exhibit 1 to Exhibit 357, was anything done by the La Frazia's to correct the condition with respect to the tires?

A No, sir, the tires were left in the same condition until the car arrived in New York at which time Mr. La Frazia, Sr. replaced all four tires on the vehicle.

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Q Did you communicate with Mr. La Frazia in February, February 1970 with respecttto this matter?

A Yes, I did.

Q I show you a letter of February 23rd and ask you if that is from your files?

A It is.

Mr. Kiel: May I ask that a copy of that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 359.

(Respondent's Exhibit 359,
Witness Zola, was marked
for identification.)

Q Was a copy of the letter which is Exhibit 359 sent to Mr. Tom Inne as shown at the bottom of the letter?

A Yes, sir.

Q Subsequent thereto --

Mr. Kiel: Strike that.

Q Was your insurance company notified about the possible claim of the La Frazia's?

A Yes, sir.

Q At the time --

Mr. Kiel: Strike that.

Q During the period of time that you had custody of the car and thereafter turned it back to the La Frazia's, was any question raised with respect to a luggage

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rack or any material on a luggage rack?

A At the time we had the car, no.

Q When did that come up for the first time, to your knowledge?

A After we commenced an action against the La Frazia's for declaratory judgment on this. We were quite concerned that a lawsuit was brewing and we felt we wanted a legal determination of our responsibility in this matter, especially in light of what our investigations discovered and in connection with the counterclaims herein did we receive an assertion of missing items.

Q How long after the transportation had been completed and the car turned back to the La Frazia's was this first assertion of a loss of a rack and certain parts on the rack made?

A In terms of our turning the car back from them it was several months. I don't know how long it took them to get the car to the New York by rail.

Q Did you file a notice with your insurer with respect to this matter?

A Yes, we did.

Q Did you receive an inquiry from your insurer or a representative of your insurer as to the status of your investigation and your findings?

A Yes, sir.

Q Did you respond to that?

A Yes, we did.

Q I show you a copy of a letter of Mr. Joseph Digiacomo and ask you if you will identify that letter?

A This is our copy file of that letter.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 360.

(Respondent's Exhibit 360,
Witness Zola, was marked
for identification.)

Q Will you tell us whether or not the information in Exhibit 360 was based upon your investigation up to that date?

A Yes, it was.

Q I show you a letter of the American Plan Corporation dated November 4, 1971 and ask that you identify that letter.

A This is a copy of a letter to Campbell, Hyman and Lang, the attorneys for the La Frazia's which was sent to us by the American Plan which was a rejection to the La Frazia's.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 361.

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(Respondent's Exhibit 2061, Witness Zola, was marked for identification.)

Mr. Browning: Mr. Examiner, I am going to move to strike the last response of the witness on the grounds that the letter speaks for itself and is the best evidence of what it purports to relate.

Exam. Reilly: What he stated is not what is stated in the letter and I will strike the answer.

Q With respect to the exhibit, Exhibit 361, from whom did you receive this letter?

A I received this letter from Mr. DiGiacomo.

Q And have you read this letter?

A Yes, I have.

Q Will you tell us whether the conclusions in that letter are the same or different from the conclusions that you reached during the course of your investigation?

A They are the same.

Q Reference was made to two letters, one of January the 12th and another of February 23rd, sent by you to the La Frazia's with respect to the replacement of the tires, was there ever a written response to those letters?

A No, sir.

Q Reference was made in the testimony of Mr. La Frazia that someone in the New York office was brash and would not talk to him, do you recall that testimony?

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A Yes, sir.

Q Do you know who spoke with Mr. La Frazia?

A That testimony related to the speaking with his mother and I spoke to them myself.

Q With respect to that, do you recall whether or not you refused to talk with the woman or whether you were brash or some such other characterization of your discussion?

Mr. Browning: Mr. Examiner, that is not what Mr. La Frazia testified from, he said he hung up. I don't know where he gets the "brash" from. There was no characterization --

Mr. Kiel: I am reading from my notes and I may have substituted a word.

Q In any event, was there any problem in your discussion with Mrs. La Frazia?

A The only problem was with getting the idea across to them that the tires had to be paid for by them before the vehicle could be re-transported and I spent approximately 45 minutes on the phone with Mrs. La Frazia.

Q Did you hang up on Mrs. La Frazia before your conversation was completed?

A No, sir, we went over the same items two or three times.

Q The question was raised with respect to the

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speed that the vehicle had been operated at. Did you investigate to determine whether there was any basis for a conclusion that the vehicle had been operated by your driver at excess speeds?

A Yes, sir, we investigated and we found no basis for that conclusion.

Mr. Browning: Mr. Examiner, that is not responsive. He asked him whether he investigated it and he said there was no basis.

Exam. Reilly: We will strike everything but "Yes."

Q What was your investigation?

A Our investigation indicated that there was no substantiation for the assertion that the vehicle was driven at excessive speeds.

Q One of the questions or one of the statements of Mr. La Frazia was that his attorney was not receiving responses with respect to an attempt to resolve the claimed loss. Do you recall that attempt?

A Yes, sir.

Q Would you tell us what, if anything, your company was doing at this time in an attempt to advise the attorney representing him?

A We wrote directly to the attorney, we wrote to our insurance carrier who wrote directly to our attorney with copies to us, we wrote to the La Frazia's, we wrote to

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the Interstate Commerce Commission, copies of letters that we sent directly to the La Frazia's and their attorneys.

In addition, I had telephone conversations with the firm of Campbell, Hyman and Lang which was the firm representing the La Frazia's and also there was a friend of the La Frazia's with the Westchester C hamber of Commerce and we wrote back to him outlining our position in this matter.

If I may, I would like to correct the name of the tire company, it is Pensky Performance, Inc., of Allentown, Pennsylvania.

Q Now, did you hear the testimony of Mr. Rust when he appeared here earlier this week or last week, I should say?

A Yes.

Q And are you familiar with the testimony of Mr. Rust and did you hear it?

A Yes, I did.

Q Are you familiar with the situation relating to the driver, a Mr. Beck?

A Yes, sir.

Q Was he ever employed as a regular driver or employee in the sense that he was on your payroll?

A No, never at any time.

Q Did you ever represent to anyone that that was a fact or authorize such a representation?

A No, sir, we did not.

Q How long has your company had any office in Texas?

A We have had an office in Texas since the end of 1967, about four and a half years.

Q Would it have been possible for anyone to have indicated that he worked for your company in Texas for twelve years?

Mr. Browning: I object to that. Mr. Examiner, it is a very leading question.

Mr. Kiel: I will withdraw the question.

Q If anyone had indicated that he worked for your company in Texas for twelve years, could that have been true?

A No, sir.

Q Do you have any professional drivers in your employ who drive 150,000 miles a year for your company?

A No, sir, nowhere near that.

Q With respect to this driver, had you investigated to determine whether he had any experience driving automobiles and whether the experience related to driving automobiles for an automobile transport?

A Yes, sir, he had driven for another automobile drive away company prior to his applying to us as a casual driver.

Q Did he advise you of the name of that company?

A Yes, he did.

Q At the time he was hired did you have any reason to believe that he was not qualified?

A No, sir, we did not.

Q Do you know what, if anything, your company advised the insurer of Mr. Rust with respect to your responsibility or liability?

A Yes, we advised him that we were primarily responsible for property damage to Mr. Rust's vehicle.

Mr. Kiel: Mr. Examiner, since this occurred recently and I am trying to keep down the documentation, I haven't reproduced this correspondence, but I will ask the witness to refer to it and it will be available for inspection.

Q Do you have a letter of February 24th to Mr. Rust's attorney?

A Yes, sir, this is from his insurance company, CNA.

Q And briefly, with respect to your representation, would you just read that one line in the letter?

A Yes, sir. "However, information contained in our East Orange file is that Mr. Rust received reimbursement of his $100 deductible from AAACON Auto Transport,

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Inc., 147 West 42nd Street, New York, and that Bob Maxwell of AAACON Auto Transport's New York office stated that he would pay CNA subrogation claim. "

Mr. Browning: The letter was from whom to whom?

A From CNA, Mr. Rust's insurance company, to their attorneys with regard to the liability claim located in Morgantown, North Carolina.

Q What is the date of that letter?

A December 24, 1970.

Q Was that letter sent to you?

A Yes.

Mr. Browning: Did he read the whole letter into evidence or did he paraphrase it?

Exam. Reilly: No, he read one sentence.

Mr. Kiel: If you wish, I could have him read the whole letter in, Mr. Browning. Or make a copy and put it in as an exhibit.

Mr. Browning: I would like the Examiner to know that there is no way of identifying who Mr. Tucker is from that letter. There is no letterhead or any other indication of who Mr. Tucker is or for whom he works, or in what capacity he was acting when he wrote that letter.

Exam. Reilly: Well, I gather he is a supervisor of CNA. He has testified that this is from CNA.

Q Mr. Zola, in connection with this matter, did your

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company receive letters of claim as a result of the accident involving the Rust automobile?

A Yes, we did.

Q And do you have -- did you notify your insurance agent?

A In every case.

Q Would you just tell us some of the dates that you wrote to your insurance agent with respect to this matter?

A May 26, 1970, June 4, 1970, June 10, 1970, June 30, 1970, July 15, 1970, September 23rd, 1970.
Yes, October 21, 1970, December 29, 1970, February 1st -- excuse me, January 4, 1971, March 1, 1971.

Q A lot of claims as a result of that accident?

A No, sir, it wasn't that there were a lot of claims, but there were a lot of correspondence regarding the claims that did arise, a lot of material.

Q In each instance was that material sent to your insurance agent?

A Yes, sir.

Q Now, what is the status of the litigation, if you know?

A As far as the third party liability claim, I am unaware of the status other than the fact that litigation has been commenced at some point our insurance companies sent us an affidavit which I executed and that is my total knowledge of that matter.

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Q Did you hear --

Mr. Kiel: Strike that.

Q Is your insurance company defending you pursuant to your policy of insurance for liability and property damage?

A Yes, to third parties, yes.

Q Is the defense of that matter in the hands of the insurance companies and their attorneys?

A Yes, sir, exclusively.

Q Do you know whether or not any motions were made in any litigation with respect to your liability under the laws of the State of North Carolina?

A I do not.

Q Did you hear the testimony of Mr. Rust with respect to his understanding?

A Yes, sir.

Q And you have no information about that one way or another?

A No, nor was I ever informed by the attorneys of any motions or any other practice that they were making in that matter.

Q With respect to Mr. Rust, did he make a claim against you for damages to his automobile?

A Yes, sir.

Q How much was that claim for?

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A $103.19.

Q How much of that did you pay?

A $100.

Q Why did you disallow the $3.19?

A There was nothing mentioned with regard to a flower pot there.

Q Did you transport the automobile after it was repaired and deliver it to New Jersey?

A Yes, we did.

Q There was a question about charge for gasoline and for --

Mr. Kiel: Strike that.

Q There was a question with respect to tire repairs. If a tire on a car being transported needs repairs, or there's a cost involved of making suitable driving, is that provided by you or do you require the shipper to pay for that?

A Our tax rules require the shipper to pay for that.

Q With respect to the balance of the amount of the cost of repairs, has that been settled with the insurance company who reimbursed Mr. Rust for a portion of the cost of those repairs?

A No, sir, because they never filed a claim with us. I presume they are waiting the outcome of the litigation.

Q Are you permitted under your insurance policy to

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undertake the defense of the interest of Rust in connection with the third party liability?

Mr. Browning: I object. I think that is a very leading question.

Mr. Kiel: I will withdraw the question.

Q I show you Exhibit 144 in evidence and I refer to the last paragraph on the first page and I ask that you read it, please.

A "According to the information furnished to me by Mr. Rust, it is my understanding that your company is assuming the responsibility of further handling and defending these actions and I would appreciate your immediately acknowledging the receipt of the enclosed summons and complaint together with your assurances that this matter is receiving your attention."

Q Did you assume the defense of the automobile owner's interest?

A No, sir, we did not.

Q Why not?

A Our police prohibits us from voluntarily undertaking any defenses that are not undertaken by your insurance company itself.

Mr. Browning: The best evidence of that policy is in that policy itself. This is not the best evidence and therefore I say it is incompetent.

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Exam. Reilly: Well, I will take it and give it whatever weight it is worth.

Q Was your insurance company in this matter the Home Insurance Company?

A Yes, sir, they had the first layer of liability insurance in this matter; Exhibit 170.

Q Would you look at Exhibit 170 and point out where this item that you referred to in your testimony may be found?

A Yes, sir, under conditions number 9, assistance --

Q Go slowly now, let's have everybody find it, would it be on the page next to the last page?

A Yes.

Q And there are two sentences in condition 9, are you referring to the first or the second sentence?

A The second sentence.

Q Would you read it, please?

A Yes, "The insured shall not accept at his own cost voluntarily make any payment, assume any obligation or incur any expense other than for such immediate and surgical medical relief as shall be imperative at the time of the accident."

There is more and if you give me a moment I will find it.

Q Fine.

A Above the conditions is the exclusions, exclusion B. "Under coverages --" it starts off the policy does not apply and it goes on, under coverages A and B to liability assumed by the insured under any contract or agreement, we have had extensive correspondence with the Home Insurance Company concerning the defense matters and our position was especially with regard to the Levy matter and they stated that this exclusion B would apply to any voluntary defense on our part.

Q When did you first learn that the driver of the vehicle was missing and was being sought as a fugitive?

A Missing and being southt as a fugitive?

Q Yes.

A Yes, when I heard that testimony here from Mr. Rust.

Q Was that last week?

A Yes.

Q Had Mr. Rust or his attorneys ever made that known to you previously?

A No, sir.

Q When did you first learn of the conviction of the driver as is indicated in counsel's Exhibit number 148 in this proceeding?

A Again, when I heard it from Mr. Rust last week in testimony.

Q Had you ever previously to Mr. Rust's

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testimony heard any information that this man was wanted by the FBI?

A No, sir.

Q Has your company ever received advice from a corresponding competitor with respect to any background material concerning this driver which would have caused you not to use his services?

A No.

Q In any event, as a situation after the fact, has your company made any representation that you are not liable as required of you by the Interstate Commerce Commission for accidents or claims within the purview of Section 2011 or any other provision of the Interstate Commerce Act?

A No, sir.

Q Since your testimony last week, has any --

A Excuse me, may we go off the record for one purpose?

Exam. Reilly: For what purpose -- is this a new subject?

Mr. Kiel: Yes.

Exam. Reilly: We will recess until 1:40.

(Whereupon, at 12:20, the hearing was adjourned for lunch.

- - -

complied with.

Q Well, for example, isn't it a fact that the commission contacted you from time to time and made certain suggestions about changing certain of your practices?

A Yes, informally. The areas were that we eliminate the words "fully insured" from our advertising.

Q Did you do that?

A Yes, immediately.

Exam. Reilly: Haven't we gone through this before?

Mr. Kiel: Yes.

Q As part of your work, do you regularly advertise your services?

A Yes, we do.

Q Do you check the advertisements of competitors?

A Continuously.

Q Was there an advertisement of a competitor of yours in the New York Times on Sunday, March 26th?

A Yes, there was.

Q I show you the ad of Auto-Trans and ask you if that was the advertisement?

A Yes, it was.

Mr. Kiel: May I ask that a copy of that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 363.

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on behalf of your company?

A No, sir, they don't handle all claims.

Q Do they insure against all claims for cargo?

A Yes, they provide our cargo insurance as provided by the ICC.

Q Isn't it a fact that you actually handle your own claims and pay your own claims for cargo damage or loss under $1,000, AAACON does?

A No, sir, that is not true. We have had --

Q You have a deductible policy, do you not?

A We have a deductible provision in our policy.

Q Which calls for AAACON to reimburse the insurance company for all claims under $1,000?

A Yes, sir.

Q Who investigates all claims under $1,000, does the insurance company or do you?

A We investigate all claims and the insurance company investigates practically all claims. They receive our documents in the case and if a customer has a dispute, we have a conference with the insurance company as we have had on many occasions.

Q Doesn't this deductible feature in your company mean as a practical matter that American Plan Insurance in practice doesn't investigate any claims under $1,000?

A No, sir, just the reverse, as pointed out to us

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by them, their obligation in all claims is from one cent up and they must satisfy themselves and the commission has so instructed them and so instructed us and that is the practice followed.

Q When was that practice put into effect?

A Since we have been with them, since 1967.

Q Can you give me a specific example of when your insurance company investigated a claim that was under $1,000, I am talking about American Plan Insurance. I am talking about your cargo insurance.

A Although, Mr. Browning, I find that kind of a question very difficult to answer, one that does come to mind is Mrs. Raze's claim, Mrs. Raze's claim had to do with repair to her engine and they investigated that one, that comes to mind, but they investigate many of them --

Q Mrs. Raze was told by the Interstate Commerce Commission who the insurance carrier was, wasn't she?

A Yes, sir.

Q Yes.

A Yes.

Q She wasn't told by you, was she?

A No, sir.

Q Now, isn't it true as a practical matter that you handle all your claims under $1,000 in connection

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with a cargo loss or damage?

A No, that is not a fact. We have to and we do go to American Plan not only for advice, but they have to satisfy themselves on every claim and they have so informed us and that is our practice with them.

They have filed with the Interstate Commerce Commission a certificate where they have to be responsible for everything from a penny up and that is their practice.

Q They are responsible for it under your insurance policy which has been filed with the ICC but you are responsible to them for all claims under $1,000, isn't that true?

A No, sir, that is not the way it works at all. We have a retrospective rating so we are responsible ultimately for every claim but in addition to that we have $1,000 deductible with regard to the payments made by the American Plan directly under the policy for people who make filings.

Q The people who make filings with them, isn't it the key to it? In most cases the people make the filings with you.

A And we forward the papers to the insurance company as we have shown in exhibit after exhibit.

Q Now, the insurance company therefore doesn't pay the claims under a thousand dollars, it is responsible your practices. Why didn't you submit your own list?

A Well, we have had questions like this before, Mr. Browning.

I presume for the same reason that you didn't submit the testimony of Mr. Max Sanders, although you had it available.

Exam. Reilly: That is not responsive.

The Witness: I submitted such information as I thought would be of use to the Commission. I didn't submit my list because it was just a determination made. That's all. We wanted to show the existence of interoffice cooperation between companies and we felt Exhibit 199 did so.

Q Is driver Bill Beck on your list now?

A Sir, our lists have about five hundred names. I couldn't tell you offhand. I would presume it is.

Q Do you have your list with you?

A No. In answer to that, just so the record shows, this list--

Exam. Reilly: There is no question pending, Mr. Witness.

Q You have stated that you transported about 20,000 cars annually; is that right?

A Yes, sir; approximately.

Q Of that, or from that transportation, you received 587 claims of all types in 1971?

A No, not really. Just--

Q Who was handling that case for your office?

A That one I really don't recollect. I remember the business about the New York City Civil Court Act and the fact that--the New York City Civil Courts are not courts of general jurisdiction, as the New York State Supreme Court is in New York County and that was the technicality.

Q Do you know whether Michael Ames of your office filed an affidavit in that case concerning whether or not you had an agent in Syracuse?

A No, sir; I frankly do not.

Q Would you agree with me that your petition to compel arbitration in the New York County Court was denied by Judge Fine and the order to show cause was vacated that you had obtained there?

A Yes; I believe that's the case. Under those circumstances which I related.

Q Let us look at your bill of lading, please, in connection with the arbitration clause.

Mr. Kiel: 162.

Mr. Browning: Any of them. 162, 158.

Q Isn't it true that the locale of the majority of arbitrators must be in New York City?

A Of the majority; no, sir.

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A No, sir.

Q Isn't that what it is?

A No, sir.

Q Settled by arbitration in New York City?

A But the arbitration itself can be on documents anywhere else in the United States.

Q On what?

A On documents submitted anywhere in the United States.

Q From anywhere in the United States?

A To anywhere in the United States.

Q You mean to say under bill of lading you can have an arbitration in Los Angeles, California?

A We will have arbitrators located in Los Angeles, California.

Q Give me a specific instance when you h[illegible] a foreign arbitrator, foreign in the sense of being out of state, you understand that, I am not talking about being a resident of a foregn country.

A Frankly, Mr. Browning, I cannot recollect the specific names of the Arbitrators that you want and the cases. I I cannot do that off the top of my head. It is an impossible question.

Q How about the name of the case?

A I cannot recollect it.

Q The name of the case.

A We have a lot of these claims matters that come before us. I have prepared those in connection with this hearing. I cannot just pull things out of thin air for you.

Q If you prepared so well for the hearing wasn't it important, didn't you think, to have specific instances of your arbitration?

A Mr. Browning--

Q Especially on this point?

A Had we been informed of the issues in this proceeding, we would have been prepared. We are finding out as we go along what the issues are.

Q You knew the issues involved the terms and provisions of your bill of lading, did you not?

A As a general matter; yes, sir, for all I know you may have been discussing the condition report.

Q You recall in our discussions specifically before the hearing and just before the hearing began, as a matter of fact, about the terms and conditions in your bills of lading that we thought were unjust and unreasonable and that included arbitration in New York City.

A I recollect asking you to please state the specific bill of lading items which you felt were unjust, and unreasonable when we were sitting here with the attorney from Boston from the ICC and during the course of an

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A If he chose to appeal it to that state and he was the one who was appealing it, yes.

Q How many cases have been actually settled by arbitration thus far in 1972?

A I could not give you an exact amount of cases.

Q Can you give me a ball park figure, a close approximation?

A No, sir, I could not.

Q Could you tell us how many cases were settled by arbitration in 1971?

A The only thing I could say with regard to how many is that where there is a dispute, the nature of the thing is that there is not that many cases where we have disputes. The exact number of cases where there is a dispute as to the settlement of a claim and it eventually ends up in arbitration, I could not tell you.

Q Are you saying there would be very few if any?

A No, sir, I am saying I could not tell you. I just said that they don't--that most of our claims do not end up with arbitration or with disputes.

Q And you can't tell us the names of the cases that were settled by arbitration in either 1971 or 1972?

A You have asked it, I have answered it. No, sir.

Q All right. Now, your bill of lading does not make any provision for the appointment of arbitrators, does it?

A No, sir.

it to them completely. These affidavits were prepared in the southern state in which the litigation occurred, and they had to go to those attorneys all over again to get new ones and it may be that they returned them to them, I am not sure.

Q In any event, the South Carolina action was dismissed as to AAACON?

A I am informed of that, yes. I don't know it as a personal fact.

Q Did you bring an action against Levy to compel arbitration here?

A Yes, only as to the issue of carrying damage, not as to the question of the third party liability, which was a separate action completely.

Q Did you seek and obtain a contempt judgement against Levy?

A Eventually, yes.

Q What was the amount of the judgement?

A I don't know sir, It was never enforced. I believe it was a smallish amount.

Q Going next to the Singpurwalla movement, Mr. Zola, where is your verification for your testimony for when the car was picked up there with damages to the car?

MR. KIEL: Let me just look in the original Singpurwalla exhibit, Mr. Zola. May I give the witness Exhibit 24?

what condition the car was in and you get an estimate for the damage to the car which damage existed prior to the time the carrier picked it up, you can't tell from that.

Q Isn't it true that you cannot tell the extent of repairs done to a car from photographs?

A That is not true, sir.

Q That is not what you testified to before. You cannot tell whether a fender has been replaced or straightened, can you?

A I testified accurately on that and I stated that in many cases you can, depending upon the nature of what has been repaired.

Q And in many cases you cannot; right?

A After a car has been repaired?

Q Yes.

A Tell whether or not -- I am sorry, would you repeat the question? I want to make sure I understand it.

Q Isn't it true, Mr. Zola, that in many cases -- this is a different question, incidentally, -- you cannot tell from photographs the extent of the damage to cars?

A That is rarely the case. That is why insurance companies take photographs.

Q From different angles, don't they, the same part from different angles?

A Depending upon the nature of the damage, sometimes one

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A Yes.

Q And for whom do you work?

A We have many accounts, among them is GSA, that is Government Services Administration, Bureau of Narcotics, Department of Immigration.

Q These are all Government agencies?

A Yes, Government vehicles and we do work for the automobile agencies like Cadillac,Chrysler, Mercedes Benz.

Q And you also do work on occasion for Aaacon Auto Transport?

A Yes.

Q And how many years have you been in the automobile repair business?

A Twenty-five years.

Q Are you the owner of the business?

A Yes.

Q The sole owner?

A That is right.

Q Can you tell us, are there reference works with regard to which you are able to come to a determination of the cost of repairing damaged vehicles, that is to say, when the physical body of the vehicle is damaged?

A Yes.

Q What would be the name of those books?

A Motors Crash Book or Glen Mitchell.

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Q With regard to the valuation of automobiles, used automobiles, are you familiar with a nationwide document that is published periodically?

A We use what is called the Red Book.

Q That would be the National Markets Reports?

A Yes.

Q It is a book with a red and a blue cover?

A That is right.

Q And are these used by most auto repair facilities in your experience?

A I believe so.

Q Can you tell us, Mr. Glickman, with regard to automobiles, do distributors of automobiles ever need replacing due to normal wear and tear?

A Definitely.

Q And are you familiar with -- strike that.

Does it happen that particular models or particular years of certain cars develop a certain degree of trouble which becomes -- strike that question and let me rephrase it. I am not getting to what I want to say.

Has it been your experience that particular models of certain cars develop mechanical troubles more so the average for a particular model car for a given year?

A Yes.

Q Can you give us an example of such a development?

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A Well, most recently, I think you all read in the newspaper, Chevrolet motor mounts were found defective and they were breaking. Pontiac will need timing changes after fifty or sixty thousand miles.

Q Timing changes?

A Timing changes.

Q Sir, are you familiar with -- well, let's try it this way:

Are you familiar with the fact that on automobiles, a radiator may freeze up causing the car to overheat; has that ever happened in your experience?

A Yes, that can happen.

Q Now, sir, if that happens in the cold weather, in very cold weather, what would be your conclusion as to the cause of that, if you know?

A Insufficient andi-freeze.

Q Would that be the normal cause of a radiator overheating in very cold weather?

A Freezing and overheating?

Q Yes.

A Yes.

Q Can you tell me, sir, in your experience, there are lights on the dashboard of a vehicle; is that correct?

A Some vehicles.

Q And these are often referred to by laymen -- as warning

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lights?

A Yes.

Q And occasionally they are referred to as idiot lights?

A I have heard the expression.

Q Can you tell us what the significance is of those lights coming on?

A They indicate that there is a problem and something has gone wrong with the car.

Q Now, I want to make this very clear: They indicate that something is about to go wrong or that something has gone wrong?

A Something has gone wrong.

Q Has it been your experience that these lights operate properly in all instances?

A No.

Q That is, that they do not operate --

A They do not operate properly in all instances.

Q If they do not operate properly, can you tell me, if you know, who could make a determination as to what went wrong with the vehicle?

Mr. Browning: I don't understand the question.

Mr. Zola: I will withdraw the question.

Q Can you tell us whether or not brakes can fail on an automobile after they have been recently inspected?

A Yes.

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Q And can they?

A Yes.

Q And is the same true for the steering mechanism of a vehicle?

A Anything can go wrong on an automobile.

Q Even after it has been recently inspected?

A Yes.

Q And that could occur also after a vehicle had been recently tuned, that it can develop problems?

A With the tuning?

Q With the mechanical portions of the vehicle itself.

A Well, --

Mr. Browning: Mr. Examiner, I am not sure I understand what Counsel is driving at.

Mr. Zola: I am differentiating between a tune-up and a thorough inspection of a vehicle. Even after a tune-up that something can go wrong mechanically and I think the answer was --

The Witness: Yes.

Q Sir, can you tell me whether or not you have had experience with Volkswagen engines failing?

A Yew.

Q Can you tell me what that experience has been?

A Well, after many years of wear, three, four years of wear, they lose oil pressure and cease up and generally we

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replace the whole engine.

Q When that occurs?

A Yes.

Q You are not saying that that occurs in every instance?

A No.

Q But that does occur with some regularity?

A In Volkswagens.

Q Sir, I show you a document and I ask you -- the document is Exhibit 29, and I ask you to pay particular attention to the paragraph above the signature John J. Sorace.

Now, sir, are you familiar with that sort of paragraph?

A Yes, it's standard on most repair orders.

Q And would you tell me, in your experience, would a garage undertake to disassemble an engine to see what is wrong with it or make an estimate on a engine without getting such a document signed?

Mr. Browning: I object to that. It is not relevant or material to this particular movement. What the general experience of this witness is as to his garage --

Mr. Zola: We already had testimony in the record, Mr. Examiner, as to whether or not this is standard as and to whether or not this is stardard practice and, I think, it is relevant to have a man who is a expert to testify whether or not this is a standard practice.

Exam. Reilly: I will let him testify.

A To my knowledge every shop has that caption on a repair order and we will get a signature before doing work.

Q Including making estimates of a mechanical nature --

A To do an estimate you have to do work on a car.

Q Thank you.

Now, sir, can you tell me whether or not in your experience driving a car at high speeds will cause the car -- strike that.

Can you tell me some of the causes that might cause an engine to lose its oil in the course of operation?

A To lose the oil, it could be a leak someplace in the engine, a gasket possibly or the oil sending switch or the engine itself could be worn and it could be throwing the oil out, burning it or the pump could go bad, and those are about the biggest major oil problems with motors.

Q Would driving a car at high speed cause it to -- these are not my words, "Throw off all its oil," so the engine would be empty of oil?

A If the engine were old and worn, it could happen but if the engine were in good condition, driving at high speed wouldn't hurt it.

Q Can you tell me, with regard to a Mustang, a 1966 Mustang, whether or not the addition -- if the engine was empty of oil and a quart were put in, one quart, would the stick register?

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A No, it would require a degree more than a quart, the first quart doesn't register.

Q But it would not require -- would it require two full quarts to make it register?

A Not to make it register, no.

Q I wish to pose to you the following hypothetical question:

If a car had its oil checked at each gas stop and the car is a Mustang and the gas tank is filled to the top so that it drives for the entire length of the gas tank before the oil is checked again, in your experience would the oil burn out of the car or would the oil normally disappear in the car within that driving span, the span that would be included in one tank of gas?

A It could.

Q It could possibly?

A Yes.

Q How would that occur?

A Well, then again it depends upon the condition of the motor of the car.

Q It would have to depend upon the condition of the motor?

A Yes.

Q Would it be a normal occurrence?

A No.

Q Now, I do not know if this was asked and if it was I

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will withdraw it but in your experience of the so-called warning lights or idiot lights work in each case?

A Not in all cases, no.

Q Can you tell me, sir, if a car has an engine failure, can a mechanic who examines that car normally determine after the car has been, let's say, towed in to his facility, can he determine the cause of that failure whether it is due to driver negligence or an inherent condition or wear and tear?

A If the problem is an obvious one, naturally you can see this is why it has happened but if it's not obvious, then you really can't determine, you know, why it happened. You can see that it has happened --

Q But you could not determine why?

A I don't think so.

Q Now, let me give you an example: For instance, if a water pump goes on a car and then the engine overheats, would that be an example of something obvious?

A Yes.

Q If the pistons had blown from the car, would this be an example of something that you could not tell the cause of the mishap, as to questions of negligence or --

A You couldn't tell why.

Q Would that also be true of head gaskets blowing?

A Well, a head gasket generally goes as a result of overheating or wear and tear, that is an obvious conclusion.

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Q But you could not tell by examing, normally, when head gasket are gone whether it was due to an excessive rate of speed, something the driver did, or wear and tear?

A No.

Q In your experience with regard to the repair of vehicles, is it common to get photographs of the damage to a vehicle?

A Yes.

Q And is this the practice of most insurance companies?

A Yes.

Q And from these photographs are you generally able to tell the areas of damage?

A Yes.

Q And the amount of repair cost?

A Right.

Mr. Zola: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Browning) Mr. Glickman, are you primarily a body shop or an engine repair?

A Both.

Q You do about 50% of each, would you say, is that your business?

A Whatever we are called upon to do, we do.

Q Are you a Volkswagen dealer and distributor?

A No, we are a general auto repair shop.

Q Do you fix very many Volkswagens?

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the questions on direct were with regard to Volkswagen, engines generally --

Exam. Reilly: I think we have listened to enough of this. I think the witness' qualifications are sufficient for him to testify as to these matters and I am not going to grant the motion to strike.

Q Mr. Glickman, how many Volkswagen engines have you required?

A Well, I just replaced one in the last two months and I think possibly one or two the year before.

Q You replaced or repaired, sir?

A Replaced.

Q You replaced the entire engine, did you?

A Yes.

Q So you have not repaired a Volkswagen engine in some time, have you?

Mr. Zola: Objection --

A Yes, I have repaired them also. You asked me how many I replaced.

Q I asked you how many you repaired.

A Many, I would have to check my records to see how many.

Q Do you drive Volkswagens yourself?

A I have driven most cars, I mean, not personally for my own personal use but around the shop I will road test a car when we finish working on it.

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can withstand one overheat and be repaired and put new water and new anti-freeze in and so on and go back out on the road. If it's an older engine, then possibly it might not be able to stand an overheat and a final termination of driving at that instant due from an overheat.

Q In other words, it depends upon the make and model of the car, I suppose and how many times it has been overheated and so forth --

A And how many miles it has on it and the prior use.

Q Isn't it true that running a car when the radiator is frozen or when the water pump is inoperative might result in anything as far as engines are concerned?

A The worse I could imagine it winding up in is a ceased engine which could be repaired again once it cooled off and everything, water and oil replaced in it. In other words, the engine just gets so hot that it will stop.

Q Isn't it true that you can throw a rod or a rod bearing with an overheated engine?

A You could.

Q You can blow the end out of the cylinder when the engine is overheating --

A No, the thing can overheat as a result of the thing going through the block, it can overheat as a result of that.

Q Can an engine preignite when it is overheated, detonate?

A It can.

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A Around the housing and I see the light is out.

Q Are you including the parts as well as the labor in that estimate?

A Yes.

Q And the painting also?

A Yes, everything.

Mr. Browning: That is all I have.

Mr. Zola: I have no further questions.

Exam. Reilly: The witness may be excused.

(Witness excused.)

RALPH ZOLA

resumed the stand and testified as follows:

CROSS-EXAMINATION CONTINUED

Q (By Mr. Browning) With relation to Jocelyn Brown --

Mr. Kiel: Off the record.

Exam. Reilly: Off the record.

(Discussion off the record.)

Back on the record.

SEYMOUR H. ALPERT

was duly sworn by Examiner and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Please give your name and business address?

A Seymour H. Alpert, 280 Broadway, New York City.

Q Sir, what is the name of the business with which you

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are connected?

A Interstate Motor Carriers Agency.

Q As far as you are concerned, what is your position?

A I am a partner in the firm.

Q Are you an attorney as well as an insurance man?

A Yes.

Q Is Aaacon Auto Transport one of the people for whom you handle insurance?

A It is.

Q Are you familiar with their insurance?

A I am.

Q What arrangements do you have with them when they receive a claim from a customer?

A Well, they report it to our office, to our claims department and we handle it, process it for them with the insurance company.

Q Sir, have you seen this letter which is marked as Exhibit 266, and shows what appears to be your name on the second page?

A Yes, I have.

Q Have you just had a chance to read it?

A Yes, I have refreshed my recollection.

Q Sir, are you familiar with the fact situation that is set forth in that letter?

A Reasonably so, yes.

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Q Is that a question with respect to third party liability that you have seen before?

A Yes, it is.

Q Will you just briefly explain what it is?

Mr. Browning: What what is?

Mr. Kiel: A question of third party liability and responsibility.

Mr. Browning: In this particular case?

Mr. Kiel: In this particular case or generally.

Mr. Browning: I will object unless it is this particular case.

Mr. Kiel: This particular case.

Exam. Reilly: Go ahead.

A This relates to the fact that the arrangement between Aaacon and the drivers is primarily what we would term that of independent contractory relationship, a contractor and independent contractor relationship. The insurance company as the result of certain suits, actions brought, claims made, question the fact of Aaacon's liability for the actions of an independent contractor and our position and that of Aaacon's is that they are fully responsible as far as the public is concerned.

Q And do they pay insurance premiums on that basis?

A Purely and solely on the basis of the number of contractors that work for them, yes.

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Q Do they pay premiums to the insurance company on the basis that the insurance company will assume whatever responsibility Aaacon has under the law whether it be the Interstate Commerce Act or any other?

A They assume full responsibility for Aaacon's liability in their operations

Q In that connection, sir, do you act as insurance agent for any other automobile drive-a-way company?

A Broker would be a proper term. We represent the assured, yes, we represent several other drive-a-way companies.

Mr. Kiel: I have nothing further.

CROSS-EXAMINATION

Q (By Mr. Browning) What difference does it make if a driver is an independent contractor or an employee as to third party liability?

A As far as I am concerned really it makes no difference. As far as the insurance company is concerned, they seem to think that they can hide behind that independent contractor relationship or they try to.

Q By insurance companies, you mean the whole insurance company for one?

A Yes, whichever insurance company insures, yes.

Q You say try to hide behind the fact that the driver involved is an independent contractor; has that occurred

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on several occasions?

A I don't think they have been successful, no, not to my knowledge.

Q Your experience in the Levy case, does that bear it out?

A I am not familiar with the ultimate result of the Levy case but I know the position they tried to assume and they haven't as far as I know been successful in their position.

Q You do not know the disposition of the Levy case?

A Not at the moment, no.

Q You do not know whether or not the insurance company assumed the responsibility for the claims against Aaacon?

A I believe that they did. I believe that they ultimately did assume.

Q Do you know whether or not Aaacon is still a party to that lawsuit?

A I don't know the disposition of the case.

Q Do you know how many claims Home Insurance Company has paid on behalf of Aaacon?

A I couldn't tell you the number of claims that have been paid but, I would say, a substantial number have beenppaid.

Q Do you know anything about the Rust case, the Ray Rust case?

A Not offhand.

Q Would it refresh your recollection if I stated that that was a case involving a driver of Aaacon who had an accident

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in North Carolina and in the accident there were at least two people injured?

A I would have to review the file myself. We have a rather large firm and I would say quite a few cases come across my desk. I would say Aaacon has been involved in quite a number of cases in the last six or seven years so it would be hard for me to identify any one particularly without looking at the file.

Q Who handles the litigation, does the insurance company handle it?

A Yes.

Q And you stated that the insurance company on several occasions has tried to extricate themselves on the basis that there are independent contractors involved?

A They have looked for various reasons to get out. They look for leverages for the purpose of settlement and they have used that point.

Q Do you know what happened -- do you know what happened in the Levy case?

A I don't know the ultimate disposition of the case.

Q Do you know why Aaacon is in the assigned risk pool?

A Yes, I do.

Q What is the reason?

A Well, the insurance companies consider the category, the business in which they operate as, I would say, a little more hazardous than the ordinary kind of risk. It's a risk that they can't cope with from the underwriting standpoint as they can in the normal type situation. They wouldn't normally assume or take on this type risk.

Mr. Browning: That is all I have.

Mr. Kiel: I just have one or two.

REDIRECT EXAMINATION

Q (By Mr. Kiel) Will you tell us whether or not the other transportors for whom you act as brokers are also in the assigned risk pool?

A They are.

Q Is it an industry situation?

A Yes.

Q You indicated that the insurance companies handle litigation when an assured such as Aaacon is being sued, do you remember that?

A Yes.

Q Is it permitted, to your knowledge, for Aaacon to assume the defense role for themselves or a third party?

A I would say no, I would say that would be a violation of the policy terms.

Q If a driver is an independent contractor instead of a salaried employee, would that affect workmen's compensation coverage in this type of situation?

A It would.

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A We have yet to receive a claim, written claim for a money amount from them. They know that we stand ready to pay the claim on their subgoration claim. Apparently they are holding that off until a determination of liability on the third party claims in the Rust matter.

Q Do you have a record of that?

A Yes, sir, that has already been introduced as an exhibit in this proceeding.

Mr. Browning: That is all the questions I have.

Mr. Kiel: I just have a few on redirect.

Exam. Reilly: Well, I hope so. I can't really conceive of a question you would ask that hasn't already elicited a response into the record.

Mr. Kiel: I will try to keep my questions as to those raised on cross-examination.

Mr. Johnson: Mr. Examiner, I would like to talk to the witness on cross-examination, if I may.

Mr. Kiel: Mr. Examiner, first I object for the reason that at Page 74 of the record, the first time this came up you indicated, and I quote "The Examiner feels that an enforcement attorney is capable of representing the interests of the protestants in this proceeding. The protestant may suggest questions to the enforcement attornry, but in order to operate under some kind of sense and order, I think that we will confine the direct examination to you, Mr. Browning.

Protestant counsel has been consulting with Mr. Browning. At the same time, Mr. Examiner, at Page 118, one of my associates attempted to cross-examine a witness for the Bureau and Mr. Browning objected and I quote "I think there is only one attorney for the other side" meaning the Respondent's side, or possibly Mr. Browning's side, and the Examiner indicated that he wasn't going to have more than one attorney handling a particular matter.

I submit if Mr. Browning, who has been cross-examining for some two days, has not covered all the evidence that is necessary to be covered then I don't understand this proceeding, and I submit if after understanding what the rules were going to be at the beginning of the hearing on the first day and which, by the way, you have continued to do without change, now, as we approach the conclusion to find that different rules will be applied, I think would be an error and I ask you to continue the ruling that you made on the first day.

Mr. Johnson: Mr. Examiner, you modified that ruling on the first day and I have the record reference, I had it yesterday. If you bear with me for a moment I will show you where it has been modified. It was at that point where I requested to ask questions of Witness White. I think it was right after Mr. Browning finished talking. Mr. Reilly, you ruled on Page 261 of the transcript and I quote " I said you should not ask any questions, you should suggest questions to Mr. Browning, that there would be one counsel offering direct examination" end of quote.

Mr. Kiel: But of course, Mr. Examiner, with respect to the Respondent and we attempted to have two counsel cross-examination, you made it clear that that was not going to be permitted by you and we abided by your ruling.

Mr. Johnson: Mr. Examiner, Mr. Kiel is aware of the fact that there is an order in this proceeding that was served on October 13, 1971 and it says "that Driveaway is permitted to hearby intervene -- that Driveaway Company be and hereby is permitted to intervene in the above entitled proceedings with the right to appear and participate in all further proceedings therein."

Now, that is item 1. Now, I think the Administrative Procedure Act makes it clear about the right of a person to represent their side of any case.

Mr. Kiel: Mr. Examiner, the Examiner has not held that Mr. Johnson's client's interest would not be involved in this proceeding. The only thing the Examiner held was that one counsel from each side would have examined the witness. It would have been perfectly proper for Mr. Johnson to examine Mr. Zola if Mr. Browning did not. I think the record shows continuously that during the examination of Mr. Zola and the other two witnesses who appeared this week, that Mr.

Browning and Mr. Johnson exchanged notes and continued for quite some time. I think in view of the fact that the Examiner determined at the beginning of the proceeding with regard to the order, I think we ought to proceed --

Mr. Johnson: I am going to object to that, Mr. Examiner. That is a deliberate attempt to pad this transcript --

Exam. Reilly: Mr. Johnson, would you please be quiet for a moment?

Mr. Johnson: Yes, sir.

Mr. Browning: Mr. Johnson and I did exchange notes in connection with the Volkswagen expert and --

Mr. Paul Zola: You did it a number of times.

Exam. Reilly: You wish to examine the witness on matters that have not been treated by Mr. Browning?

Mr. Johnson: I intend to examine the witness on the Rust affair. I intend to examine him on matters that have not been touched on by Mr. Browning.

Exam. Reilly: Well, I am going to let you proceed, Mr. Johnson.

Mr. Kiel: May the record show that I feel you have committed a grievous error and that you have deprived the rights of my clients to a fair hearing.

Exam. Reilly: The reporter had noted it in the transcript.

Exam. Reilly: It is, Mr. Kiel.

Q Have you looked at a highway map to determine whether there was a feasible or reasonable route from Fort Lauderdale to Boston through Atlanta?

A Yes, sir, and the routes --

Mr. Browning: I object to that. The witness should be responsive to his own --

Mr. Kiel: He said "yes". I think that was responsive.

Mr. Browning: Well, he was going on.

Exam. Reilly: Go ahead.

Q What routes would that be from Fort Lauderdale through Atlanta?

A If you give me the map I will give you the exact routes.

Exam. Reilly: Well, I might state at this point in this area, that any time the question of mileage is concerned, the Examiner is going to refer to the household goods movers mileage guide, and all other parties in the proceeding may do likewise.

A Route 192, Route 1, 2, 441, 475 and then 85 goes into 95. This is one of the major routes north.

Q Is there a Florida Turnpike that goes from Fort Lauderdale and connects with Route 75 into Atlanta?

A Yes, sir.

Q While that might be somewhat longer than a more direct route, is that a desirable route as far as you are concerned because it is all superhighway?

Mr. Browning: I object, I don't see why this is relevant at this point. The question is not relevant or material.

Exam. Reilly: He may have some opinion as to that, he may answer it.

A The choosing of a specific route may be left to a certain degree to driver discretion. A route may be very heavily traveled and an alternate route may be a better route. It may be longer in terms of length, but shorter in terms of traveling time. We can't second guess when a driver is in the car what the traffic conditions may be or the weather conditions, or the condition of the road may be.

Q Now, with respect to the record, there are marked for identification statements of certain of the drivers who answered questions with respect to inquiries that you made of them. Now, why do you secure statements and especially verified statements, or affidavits, from these drivers?

A We normally just secure written statements from the drivers to collaborate what they have told us normally in telephone conversations with us, which is the first thing they would normally do, call us up on the telephone. In connection with the fact that there are times when we have to be second guessed on whether a particular claim is right or wrong, we sometimes require a further collaboration under oath on the question of rightness or wrongness. Our feelings and the Commission had extensive communications and phone calls, and we have had extensive harassment from Mr. Kirk including --

Mr. Browning: I object to that, Mr. Examiner.

Q Use simple words, please.

A Mr. Kirk, took among other measures, not only sending letters to us with offensive remarks on them, but also he took to calling our employees at home at night. It was after the Kirk incident which took place over a period of months with telephone calls, letters, threats and every kind of nasty proceeding that one could manage, we decided that we ought to use a nonexistent person's name to denominate claims department handling.

Q I show you a copy of Exhibit 152 concerning which Mr. Browning inquired, and I ask you, sir, whether or not you know of anything in your bill of lading agreement which would limit a shipper to a period of less than nine months within to file a claim?

A No, sir, there would not be anything in our bill of lading and that issue has been raised in the courts and before the Court of Appeals in the Second Circuit, and it was upheld that there was not.

Q In what case?

A The Levine case.

it was $80. In the Cahen case it was $50 plus a repair charge. In Budget Rent-a-car it was $260 for repair charges advanced pursuant to our tariff.

Q Now, tell us, please, the dates of those actions?

A I don't have the dates here, sir.

Q What series of bills of lading are you using now at the present time?

A I don't know for sure. I believe it is a J series.

Q When was it -- when were you using the F series?

A I couldn't tell you, sir.

Q Would it be a number of years ago?

A No, sir.

Q Or recently?

A It would be -- I honestly couldn't tell you.

Q Approximately.

A I couldn't tell you, sir.

Q How about the C series?

A Before the F series.

Q Okay.

A A lot has to do in the series in the number of bills of lading ordered in that series.

Q In the Teafatiller case, Mr. Zola, was there a hearing at which the Respondents came in to give evidence?

A There was a hearing in which the Respondent's counsel was present and we were present.

Q Was that a number of years ago?

A Not to my knowledge, no. It was fairly recently. I can not give you the exact time.

Q Can you give us the exact year?

A I think it was in 1971, sir.

Q Was this an American arbitrator -- was it an arbitrator that was selected from the American Arbitration Association panel?

A Sir, I do not recollect.

Q What was the result of the arbitration?

A. The result of the arbitration was that we paid Mr. Cahan a certain amount of money. The sum was, I believe, over $1,000. The exact amount I do not recollect.

Q Was that the full amount of his claim?

A I do not recollect. It was pretty close to it. It was the amount that the arbitrator deemed just and reasonable under those circumstances.

Q How many arbitrators were involved?

A There was either or it was two and a third selected. I do not recollect.

Mr. Browning: That is all the questions I have at this time.

Mr. Kiel: I have no questions. May I move at this time Mr. Examiner, the admission of Exhibits 155 through 365,368 through 375, which I believe to be all of the exhibits which I had marked and identified.

Q Who collected that money, as far as you know?

A I haven't the foggiest notion. I don't even know if it was ever paid.

Q How was Horton paying you?

A The contract arrangements that we have with Horton spell that out. Horton retained 85 percent of our tariff as his compensation, and he remitted to us the tariff less 85 percent.

Q Do you know how many checks would have been sent to Horton in payment of this bill?

A I have no way of knowing that.

Q On how many occasions did you have Horton account for the monies he had received?

A That isn't the way we operate.

Q How did Horton account to you?

A You see, the way Horton has to account to us is with respect to his bills of lading. Each bill of lading that he used, he must account for in terms of a tariff. In other words, we will look at -- take this bill of lading right here. This is a Boston bill of lading. Let's say it had been a Horton bill of lading. This was a Boston to Los Angeles shipment. We can see the origin and destination. We look in the tariff, we know the price, we know what Horton has to account for. In other words, this is the only document that we will ever receive from Horton with respect to the monies which he owed us.

Q That document doesn't show your tariff charge.

A Doesn't have to. All I need is the origin and destination, because on our tariff it is simple, all you have to do is look state to state. This is, by the way, the way all our offices report to us. If you want me to go further, on this particular order, this is what we call a split order, in which each office has to account for half. This is a Boston bill of lading. So what we would have done, we would have gotten half the money from Boston and half the money from Horton's office in Los Angeles.

Q How would Boston receive any money from that move?

A We have a system of split cards where the offices adjust between themselves. In other words, Horton paid Boston the money amounting to half of the price for the movement, and each accounted for each to us. It is a very simple system.

Exam. Reilly: How much more of an examination do you have, Mr. Browning?

Mr. Browning: I don't think too much longer.

Q When you repossessed a car, is it not true that in many instances you were required to repair the car before it was operable?

A Mr. Browning, I wish -- it may be just an error in wording, but we never repossess cars.

Q When you picked up the repossessed car.

A What our system is with the pick up of any vehicle from any place, if it needs repair, we call the owner and we say you better get your car fixed or we can't send it. We very, very rarely put out monies at the inception of a trip for repairs. Sometimes we are forced to do it on the road, but we would like to avoid it if we can.

Q Isn't it true in many cases where repossessed cars are involved we must make repairs before they are operable?

A We don't make repairs.

Q Who does?

A The bank or whoever it is that owns the car, or whoever wants it. Whoever gave us the order. We tell them we will call them and say look, we saw your car and we believe it needs X Y and Z, would you have it done.

Q You have it done?

A We don't.

Q You make the arrangements?

A No, they make the arrangements to have it done.

Q By long distance phone from California?

A Sure, it is very simple.

Q Who pays for it, the banks?

A Sure.

Q Isn't it true that in your tariff there is a provision which enables you to advance charges incidental to the transportation of shipments?

A Yes, enables us to, not force us to.

Q Repair facilities and so forth, whatever is required to make the car operable?

A Right.

Q That's at the request of the shipper?

A Right.

Q Is this often done --

A By us, never. We can't stand to do that. It is too much difficulty. You get into all sorts of fights and hassels about if it was done right, it wasn't done right. We would just as soon let them fight it out between themselves.

Q When was Horton discharged?

A As it is in the statement, if I can just refresh my recollection --

Mr. Kiel: Page 20.

The Witness: Page 20?

A -- November 1, 1971.

Q That was shortly after the first of the sessions of hearings in this proceeding?

A You are correct, sir.

Q Mr. Horton was here, actually, wasn't he?

A Yes.

Q Through the first session?

A Yes, sir.

Q Is there any reason you didn't have him testify in this proceeding on behalf of Aaacon?

A Mr. Horton hasn't got the best and friendliest of feelings right now for the management of Aaacon as well as, I might add, for other people in the driveaway business. I don't -- in view of my opinions about Horton and some of the things that he appears to have done, I don't believe he would be a creditable witness, in any event.

Q What were the circumstances under which Mr. Horton terminated his arrangement with you?

A He didn't terminate it with us. We terminated it with him. The circumstances arose out of the -- in large measure out of the events that took place in this hearing room during the first session of these hearings, and certain disclosures made by Mr. Strakash. I won't have a man like that in my company. I just, frankly, get upset thinking about that, and I don't like to have to go over the details of what he said. If anyone ever needed a reason to fire a man or get rid of him, those were the reasons.

Q Were there any disputes between you as to money?

A Well, we took a bit of a bath with Mr. Horton, I must tell you, but I would rather have lost some money than kept him on in our company.

Q Did Horton ---

A We lost about three or three and a half thousand dollars as a result of this, but it is money I am glad to have lost in a sense.

Q Did Horton ever make any claim for money against your company?

A Horton? Oh, I think he wrote me a letter that I owed him $300,000 or something like that, some sort of a wild allegation. That was after he was fired, by the way, my losses were out of pocket, his losses were out of thin air.

Q When Mr. Strakash first investigated the operation of Horton, do you recall that?

A Just to get this clear, there was a time when we were talking by phone, Mr. Strakash and I. Is that the time you are referring to?

Q No, when he went out first and documented these shipments.

A You would have to refresh me as to when that was. I don't believe I have that in my statement. I think it is in the record, but I am not quite certain. I think I am mistaken. On page 13 of my statement I say sometime during the fall of 1970 we began to receive inquiries from District Supervisor Walter W. Strakash of the Interstate Commerce Commission concerning Horton's operations and more specifically the nature of Inter-City. I believe that was the first time when we knew of Mr. Horton's -- of Mr. Strakash's interest. I believe that's the case.

Q When did Mr. Strakash meet either you or your brother, Ralph, in California?

A He met my brother Ralph, I believe, it was either December, '70 or January, 1971, but I am not exactly certain as to the date. It was sometime, I believe, in that period.

Exam. Reilly: I am in need of something, Mr. Browning. We will take a ten minute recess.

(Whereupon, a recess was taken)

Exam. Reilly: On the record.

Mr. Browning: Mr. Examiner, are we ready to go ahead?

Exam. Reilly: Yes.

Q (By Mr. Browning) Mr. Zola, look at Appendix E.

A Eight?

Q E.

A Yes, sir.

Q I ask you to state what steps did you undertake to determine who was picking up the cars at Horton's premises in connection with the last paragraph of Appendix E?

A Mr. Browning: You are asking me to prove a negligence which is a very difficult thing. We had not cause whatsoever to suspect that there was any difficulties with what was going on in Horton's premises. Apparently the fellow who did was Mr. Strakash, who didn't tell us. If I had the slightest suspicion that anything was going awry, I would have indeed gone out there and tried to find out. Now, you know, we have other offices in the United States, too, that have cars delivered to their premises from time to time, not on this regular basis, but certainly from time to time, and I have no reasonable grounds to suspect that there is any hanky panky going on.

Q You raised the issue with the Commission, with Mr. Delaney --

A That was not in connection with Mr. Horton. That was in connection with another agent we had by the name of Norman Vickerman. Norman was the first man who ever came with us as an agent and he was in San Francisco, that ever engaged in repossession business and he was the one that -- he said what are we going to do, and I raised it with Mr. Delaney, he came before Horton.

Q This goes back to 1970, November, doesn't it?

A Right. When did Horton come with us?

Q Horton came with you before 1970, didn't he?

A No, '70, January, '70.

Q Horton came with you in January, 1970?

A Right.

Q Oh, this letter was written about Horton or in connection with Horton?

A No, it was written in connection with -- yes, sure, it was written in connection with Vickerman. You know, the first line of that letter says "this response to your letters of January 30 and February 5th". We had gone down there first and chatted with him, and then he said why don't you write me a letter. This was before we knew anything about Horton or his supposed situation. But Vickerman had come with us before, I think sometime in 1969, middle of '69, and that's when we had initiated the whole thing.

Q In any event, you were told by Mr. Strakash that the practice of Horton in billing for the delivery to the dealer from his premises, together with billing for the entire transportation or that part of the transportation from the origin point to Los Angeles was improper?

Mr. Kiel: I wonder if I could have that read. I am sorry, I got confused in the middle of the question.

(Whereupon, the reporter read back last question.)

A Yes, that's correct, he called us at one point. I think he called my brother actually, but I have some knowledge of it. He called us at one point and he said you know what Horton is doing, he is making these joint billings. I said if you want him to stop it, he will stop it.

Q At that point, you knew who Inter-City was?

A No, sir, not a word.

Q Wasn't there some suspicion in your mind as to whether or not Horton was performing the last leg of the transportation?

A No, sir. Let me explain. There were five carriers that apparently Horton used. On the billing that he submitted here, you never see the name of a carrier. You just see tha he was billing for the carrier. All right, so, Mr. Strakash said well, it is the wrong thing to do, so we stopped it. Mr. Strakash never even mentioned that there was a problem with Inter-City, and the first time that I knew that Inter-City had some connection with Horton was when Mr. Strakash sat here and said that that man's signature was on the checking account.

Q Didn't Mr. Strakash tell you that Horton was billing on behalf of Inter-City for the entire movement?

A No, he told me what I believe is reflected pretty well in these bills, that he was billing for a subsequent movement.

Mr. Kiel: May I refer you, Mr. Browning, to Appendix F.

The Witness: F?

Mr. Kiel: Your statement.

A We told him to stop it. You can see the tone of this letter -- it is a kind of an informal letter saying please don't do it any more. We even addressed him as Ernest. It wasn't a formal situation where you say Mr. Horton.

Q Mr. Zola, in connection with Ray Rust, did you have a meeting with Ray Rust and his insurance agent outside in the hearing room after his testimony?

A I chatted with him in the hall for a couple of minutes.

Q Did you tell a representative of the insurance company and Mr. Rust that if the allegations of fraud were dropped, that you would insist that Home Insurance Company pay his

No. MC-C-7287 et al

1887

SERVICE DATE

NOVEMBER 30 '73

Interstate Commerce Commission

Certificate of Service

The SECRETARY of the Interstate Commerce Commission hereby certifies that the attached initial decision of the Administrative Law Judge has been filed with and duly made part of the record herein and has this date been served upon all known parties in the manner provided by law and the regulations of this Commission.

Exceptions to said decision, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D.C. 20423, and served on all other parties of record within 30 calendar days (20 days if there are no other parties) from the date of service shown above. Replies thereto may be filed within 20 calendar days after the final date for filing exceptions. If either date falls upon a Saturday, Sunday, or legal holiday, then the applicable pleading must be filed by the end of the next business day.

If no exceptions are filed to the initial decision, and it is not stayed by the Commission, the initial decision becomes the order of the Commission by operation of law upon expiration of the period for filing of exceptions. The parties to this proceeding are warned that it should not be assumed that the initial decision has become effective as the order of the Commission by operation of law until a notice to that effect has been received.

In addition, any new operation to be authorized by the initial decision, if it becomes the order of the Commission by operation of law, may not be commenced until a certificate, permit, or license, as the case may be, has actually been issued by the Commission. A certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder as specifically set forth in the initial decision.

Robert Oswald

ROBERT L. OSWALD
Secretary

(SEAL)

DEC 3 1973

APPENDIX 1547

OH

INTERSTATE COMMERCE COMMISSION

INITIAL DECISION

No. MC-C-7287[1]

AAACON AUTO TRANSPORT, INC. - INVESTIGATION AND REVOCATION OF CERTIFICATE

In No. MC-C-7287, respondent found to have been, and to be, in violation of provisions of the Interstate Commerce Act. Cease and desist order issued.

In No. MC-C-7287 (Sub-No. 1), petition by AAACon Auto Transport, Inc., for declaratory order filed by AAACon Auto Transport, Inc., seeking interpretation of its certificate, denied.

In No. FF-359, application of Auto Trip USA, Inc., denied for the reason that the applicant is found not fit.

Philip M. Browning, Jr., and Joseph F. Walker for Bureau of Enforcement.
Morton E. Kiel, Paul Zola, and Ralph Zola for respondent, petitioner, and applicant.
Eugene C. Ewald, Wilmer B. Hill, and Daniel B. Johnson for protestants.

By Joseph A. Reilly, Administrative Law Judge:

By order dated March 18, 1971, the Commission instituted an investigation under authority of sections 204(c) and 212(a) of the Act, into and concerning the motor carrier operations and practices of AAACon Auto Transport, Inc., hereinafter called AAACon, with a view to determining whether AAACon has been and is performing operations not authorized by its certificate, in violation of section 206(a) of the said Act, and the terms, conditions, and limitations of said certificate, and whether AAACon has been and is engaging in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in violation of section 216(b) and sections 219 and 20(11) of the Act. In No. MC-C-7287 (Sub-No. 1), by its petition for declaratory order, AAACon seeks an interpretation of the terms and provisions of its certificate in Docket No. MC-125808 and subs thereunder. In No. FF-359, by its order dated May 4, 1971, the Commission reopened the proceeding in No. FF-359 for further hearing solely on the question of applicant's fitness, as that question relates to the necessary finding of consistency with the public interest and the readiness, ability, and willingness properly to perform the proposed service, on a consolidated record with the proceeding in No. MC-C-7287.

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[1] Also embraced is No. MC-C-7287 (Sub-No. 1), AAACon Auto Transport, Inc. - Investigation and Revocation of Certificate and No. FF-359, Auto Trip USA, Inc., Freight Forwarder Application.

The proceedings in the foregoing dockets were referred to the Administrative Law Judge for hearing and initial decision thereon. Hearings were held in New York City, N. Y., from October 18 through October 22, 1971, in Miami, Fla., from January 17 through January 19, 1972, and in New York City, N. Y., from March 20 through March 31, 1972. Appearing as protestants or intervenors in all proceedings were National Automobile Transporters Association, Automobile Transport, Inc., Baker Driveaway Company, Inc., Dealers Transit, Inc., Kenosha Auto Transport Corporation, M & G Convoy, Inc., Gate City Transport Co., Square Deal Cartage Co., F. J. Boutell Driveaway Co., Inc., Nu-Car Carriers, Inc., and Auto Driveaway Company.

EVIDENTIARY MATTERS

Attached hereto as Appendix A is a summary of the evidence presented in the proceeding. Every effort was made to include in the summary only those matters peculiar to the facts and circumstances surrounding the evidence given by each witness. In addition, there are matters which relate to and affect the evidence of all or most of the witnesses. These include the question of arbitration, driver selection and investigation of background, insurance, bonding of drivers, bills of lading, advertising, and general matters relating to the handling of claims for loss and damage in connection with the transportation of automobiles in driveaway service by AAACon. These matters will be discussed below.

The bill of lading utilized by the respondent prior to March 1972 is a form designated as a "bill of lading agreement" and is given to and signed by the shipper of an automobile at the time it is picked up. With respect to arbitration, the agreement states:

> "Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the performance or breach thereof, is non-assignable and shall be settled by arbitration in the city, county, and State of New York, provided however, that upon such arbitration the arbitrator(s) shall be bound by, and may not vary or modify, the provisions of this Bill of Lading agreement and shall, at the request of any party thereto, apply the rules and laws of evidence that would otherwise apply in a court of proper jurisdiction."

Ralph Zola testified that just prior to the beginning of the March 1972 session of these hearings, the respondent had received a new bill of lading form from the printer and was, at the time of the hearing, in the process of distributing the form to its offices, but that distribution had not been completed. The respondent had not filed, nor attempted to file the new form of bill of lading with the Commission. With respect to arbitration, the new form states:

> "Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or performance or breach thereof, shall be settled by arbitration in New York City. Upon said arbitration, the arbitrator's shall be limited to enforcement and application, without exception, of the provisions of this agreement and, at the request of any party, of the rules and laws of evidence of the State in which said arbitration is held. Should the arbitrator vary or fail to apply and enforce, strictly, any provision of this agreement, or said rules and laws of evidence, for any reason whatsoever,

> said arbitrator shall be ousted of jurisdiction, and any award made by said arbitrator shall be null and void, and thereafter arbitration shall be recommenced in accordance herewith."

The Uniform Bill of Lading made a part of the tariff of the respondent on file with the Commission prior to March 1972 and subsequent thereto makes no reference to arbitration as a manner of settling claims or disputes resulting from the transportation of automobiles under the authority held by the respondent.

Both bill of lading agreements contain a similar provision that the driver and shipper consent to the personal jurisdiction of the courts of the State of New York and to service of process upon driver or shipper for the commencement of any action in connection herewith by certified mail addressed to his last known address within the United States.

The respondent dedicated 51 pages of its brief in an endeavor to establish the efficacy of the arbitration process in the handling of disputes or claims. In addition, the witness for the company, Ralph Zola, was subject to direct and cross-examination on the issue of arbitration covering several hundred pages in the transcript of the instant proceedings.

In actual practice, however, it appears that the policy of the respondent is to avoid actual arbitration of disputes or claims against it. Mr. Zola was unable to give the number, or any estimate of the number, of claims settled by arbitration in either 1971 or 1972, nor could he cite a specific example of a case going to arbitration. While he acknowledged that the respondent's bill of lading agreement made no provision for the appointment of arbitrators and that there is no panel of arbitrators from which arbitrators are selected, he claimed that the respondent often asks the American Arbitration Association to provide arbitrators, but could not cite an instance where this had been done. Although he claimed that the respondent had applied to the court under Title 9 U.S. Code, for the appointment of an arbitrator, he could not recall a single instance when this had been done.

However, the respondent did use arbitration procedures for other purposes. As noted above, Mr. Tomany testified as to 21 legal actions commenced by the respondent in the Supreme Court, Manhattan County, N. Y., in 1971, in each of which the respondent was seeking an order by the courts staying a lawsuit brought by a claimant in a jurisdiction outside the State of New York and enforcing the arbitration provisions in the bill of lading of the respondent requiring claims to be arbitrated in New York, N. Y.

One example of the methods utilized by the respondent in the use of arbitration procedures concerns a shipper by the name of Boldts. He was a resident of California whose automobile had allegedly been damaged while under transport by the respondent. He filed a suit against the respondent in the courts of California seeking damages allegedly suffered while the car was in transport. The respondent filed action in the New York courts to compel arbitration of the claim. The court entered an order compelling arbitration. Subsequently, apparently on the basis of a default or the institution of the action in California, the respondent obtained a contempt judgment in the New York courts against Boldts in the amount of $13,700 plus interest from December 7, 1971 and this contempt judgment was filed for registration in the California suit on February 25, 1972. The total claim by Boldts in the California suit was approximately $1,200.

Compulsory arbitration in the city of New York obviously places a burden on a claimant which he should not be forced to bear. In this connection, there is quoted below portions of a letter dated June 15, 1971 from the Chief of the Section of Tariffs of the Commission to the respondent stating reasons for the rejection of a tariff filing.

> "For you to provide service only upon imposing such an unjust and unreasonable condition as compulsory arbitration in New York City subject to the laws of New York State must be viewed as contrary to your common carrier obligation as set forth in section 216(b) and the terms of your certificate.
>
> It was plainly the intent of Congress to allow injured parties to pursue their claims against carriers, without hinderance, in any jurisdiction in which such carriers

> were doing business or through which they were conducting transportation activities. To allow you by contract to restrict the venue of your customers throughout the country narrowly to arbitration in New York City thereby seeking to deprive injured plaintiffs of any use of the local process contemplated would be such a gross deterrent and constraint upon persons holding legitimate but disallowed claims against you as to constitute an unreasonable impediment to the obtaining of a determination of carrier liability and an unlawful attempt to limit such liability."

A copy of the bill of lading agreement utilized by the respondent is attached hereto as Appendix B.

It should be noted that Ralph Zola testified that he was graduated first in his class at the Wharton School of Finance in Accounting and was graduated Cum Laude from Harvard Law School. For several years he was engaged in the private practice of law in New York City. In September 1966 he joined the respondent as Vice President, Treasurer, Director, and a principal stockholder. Subsequent to joining the respondent, he formed the law firm of Zola & Zola, with his brother Paul Zola, which maintained offices in common with the respondent and which handled all claims and other legal matters relating to the respondent. In view of his background and experience, the lack of memory of Ralph Zola with respect to arbitration matters relating to claims against the respondent is hardly credible.

The bill of lading agreement is, on its face, either grossly unfair to the shipper or, in the manner in which the provisions were enforced by the respondent, left the shipper in such a position that he had no recourse for alleged disputes or claims. In the bill of lading agreement, the shipper guarantees the operating and mechanical condition of the car to be transported and assumes all responsibilities for damages and all liabilities arising therefrom. It further states that regardless of cause, carrier shall not be liable for any damages or consequences from or for any delay in delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. The respondent utilized the mechanical defect provision in almost every claim, at least initially, without any apparent investigation surrounding the alleged failure of the vehicle or the manner in which the claim arose. The matter of excess mileage creates an intolerable situation for the shipper in that he has no control over the driver and could hardly anticipate "frolics by the driver" of excess mileage of from relatively few to more than 1,700 miles. In fact, in one instance of excess mileage of approximately 1,200 miles the auto being transported was engaged in an accident approximately 600 miles east of the point of pickup in a situation where the delivery was to be made to a point more than 1,000 miles west of the point of pickup. In another, involving excess mileage of 350 miles, the automobile being transported was involved in an accident during the off-route driving.

The bill of lading agreement provides that payment to driver by shipper or shipper's agent shall constitute conclusive evidence of satisfactory delivery and that retention of driver's fee, at shipper's option, beyond a seven-day period shall constitute conclusive evidence of full settlement and satisfaction of any claims against carrier by shipper and shipper's assigns. As noted in Appendix A herein, the respondent frequently, and without investigation, resisted claims on the basis of mechanical defect, payment to driver, and retention of driver's fee in combination or individually. (Underlining supplied.)

When a prospective shipper contacts the respondent concerning the transportation of an automobile, he is sent a one-page advertising brochure containing, among other things, the point of delivery, the price for transportation, and the terms of payment. The remainder of the brochure recites, among other things, that the respondent is the only nationwide auto carrier licensed by the U. S. Government providing complete delivery service to or from every point in the United States; that it operates the most modern facilities in the transportation industry; that the dispatch and arrival of the car is fully guaranteed, not by some second or third party but by the respondent; that thousands of satisfied customers and its many years of experience attest to the respondent's record of service to car owners with care and safety; and that the respondent is the only company licensed by the U. S. Government to transport automobiles to or from all points in the United States, including Alaska, and enjoys industry leadership because "AAACon has the longest record of proven service to the automotive world".

The fact is that the respondent is not the only nationwide auto carrier authorized to provide service between all points in the United States. The protestant herein, for one, is authorized to provide the same service. The "most modern facilities" must refer to office and office equipment since the respondent operates no motor vehicle equipment.

The brochure also states:

> "We fully insure your car for liability in the amount of THREE MILLION DOLLARS, as well as full coverage for all collision damage, including the deductible amount. Our drivers are bonded for the sum of $7,500. All this double protection is in addition to your own insurance and gives you DOUBLE PROTECTION at no additional cost."

The fact is that the respondent does maintain a policy of insurance in the amount of $3 million, but that such policy has a deductible provision of $1,000. Since, in almost every case, claims by shippers against the respondent are for less than $1,000, it appears that the responsibility for investigating claims under that amount rests with the respondent and the record indicates that the respondent, and not the insurance company, investigates such claims and decides on its own whether or not the claims will be honored, and in what amount. The record clearly demonstrates that the respondent handles all claims for less than $1,000 in almost every instance and that denial of a claim, again in almost every instance, is based on the arbitrary conclusion that the basis of the claim rests on a mechanical defect, or payment to the driver on delivery constitutes conclusive evidence of satisfactory delivery of the vehicle, or that retention of the driver's fee beyond a seven-day period constitutes conclusive evidence of full settlement and satisfaction of any claims against the carrier. The arbitrary denial may be one or all of the foregoing reasons.

In addition, the respondent generally advises a claimant to look to his own insurance company for reimbursement in an attempt to place liability on a person not a party to the contract of transportation

There is no evidence of record that the drivers were, in fact, bonded for the sum of $7,500 or any other amount. If such a bond existed, there is no evidence of record as to what the driver was bonded against or for, or in what manner the provisions of the bond came into play for the protection of a shipper.

The respondent claims that its drivers are carefully selected and that an investigation is made of their background prior to assigning a car to a driver for transportation. The record is bare as to how the drivers are selected and to what extent an investigation is made of their background. It is obvious from the record that a minimal investigation is made as to background of drivers. For example, the driver of the Rust car was involved in an accident in North Carolina in which he was charged with hit and run driving resulting in personal injury which was a felony and a misdemeanor charge of driving under the influence of liquor and sentenced to 9 months in jail for the first offense and 6 months for the second. During the pendency of the suit it developed that the driver was sought by the Federal Bureau of Investigation as a fugitive from justice and at that time had an extensive record for convictions for auto theft, interstate transportation of stolen motor vehicles, mail fraud, armed robbery, kidnapping and escape from prison on several occasions. The off-route frolics of the drivers resulting in excessive mileages do not reflect the actions of responsible persons. In other cases, the car at time of delivery contained two or more so-called "hippie types" and a member of a disbanded rock group.

Bob Maxwell and A. J. Backer were fictitious persons to whom all claims or disputes addressed to the New York office were referred whether the matter was being handled by telephone or by written correspondence. Oral or written communications addressed to either of the foregoing were handled by either Ralph Zola, Michael Ames of the Zola & Zola Law Firm, or Max Molbert, an employee of the respondent. The only exceptions to the foregoing appear to be when the matter was referred to the law firm of Zola & Zola and communications then would be answered on the letterhead of the law firm or telephonic communications would be handled by a member of the law firm.

DISCUSSION AND CONCLUSIONS

In general, it is abundantly clear from the record that the respondent has for a long period of time consistently, knowingly, and deliberately pursued a course of arbitrarily denying the just claims against it; of impeding the settlement of any and all claims against it by engaging in devious, and sometimes blatant obstructionist tactics to avoid settlement of claims; of utilizing a "bill of lading agreement" in its relationship with its shippers which differed in important aspects from the Uniform Bill of Lading incorporated in its filed tariffs, all to the detriment of its shippers, and of holding out a type and character of service it did not actually perform.

Specifically, the forced arbitration of claims in New York City and under the laws of the State of New York it is palpably unfair to the users of the service of the respondent and imposes on such users an onerous burden they should not be made to bear. The cars transported by the respondent moved to and from all points in the United States. At the time of filing a claim the claimant may reside at a point hundreds or thousands of miles from New York City. To deny a claimant access to courts local to his residence is to deny effectively justice to a claimant, as stated in the letter of June 15, 1971 from the Section of Tariffs of the Commission to the respondent:

> "To allow you by contract to restrict the venue of your customers throughout the country narrowly to arbitration in New York City thereby seeking to deprive injured plaintiffs of any use of the local process contemplated would be such a gross deterrent and constraint upon persons holding legitimate but disallowed claims against you as to constitute an unreasonable impediment to the obtaining of a determination of carrier liability and an unlawful attempt to limit such liability."

The question of forced arbitration in New York City becomes particularly acute in light of the fact that the vast majority of claims here involved are under $1,000, which is the deductible in the liability insurance carried by the respondent. It is obvious that for a claimant residing several hundred or several thousand miles distant from New York City that the costs of travel and incidents thereto would exceed the amount of the claim. Under such circumstances, the claimant has no recourse but to abandon his claim despite the justice of it.

It is quite clear from the record, despite protestations to the contrary, that the respondent never intended to use the arbitration process to settle claims. The person employed by the respondent to handle claims, a principal owner, a vice-president, and a lawyer employed by the respondent, could not remember a single instance during the two years prior to his testimony in which a claim was actually arbitrated nor could he remember a single instance in which a panel of arbitrators was convened to hear evidence bearing on a claim. On the other hand, during 1971 the respondent filed 21 suits in the courts in New York City seeking orders by the courts staying lawsuits brought by claimants in a jurisdiction outside of the State of New York and to enforce the arbitration provisions in the bill of lading agreement. Can there be any doubt that the sole purpose of these suits was to create an unreasonable impediment to the determination of carrier liability on any claims, whether they be just or unjust.

It is also significant that despite the strong language of the letter of June 15, 1971 from the Section of Tariffs, the respondent made no effort to change or delete the arbitration provision in its bill of lading agreement. In fact, the reformed bill of lading agreement which the respondent states it distributed to its agents about March 1972, but did not file with the Commission, still contained the arbitration provision.

The respondent did not assume its liability as a common carrier for the "full actual loss, damage, or injury" to property being transported by it. The record is replete with instances of denials of claims solely on the grounds that the signing of a receipt on delivery of a car or retention of the driver's fee beyond a seven-day period after delivery constituted conclusive evidence of full settlement and satisfaction of any claims against the respondent by the shipper. In numerous other instances, claims were denied on the ground that the proximate cause of the incident giving rise to the claim was a mechanical defect of the car being transported. The denials were made and persisted in despite the fact that the respondent made no, or only cursory, investigation into the facts and circumstances giving rise to the claim.

The record is clear that the respondent did arbitrarily deny claims when the facts available to it were inconsistent with denial. The testimony of witnesses Weller, Clausner, and Bracken reflect this course of action by the respondent. In each case, the respondent settled the claims immediately subsequent to the testimony herein of each witness despite the indisputable facts that the respondent had all of the pertinent facts surrounding the claims in its possession for more than a year prior to such testimony.

The respondent further sought to avoid its responsibility as a common carrier by insisting that claimants seek recourse from their insurance carrier for damages suffered before it would further consider the claims. The insurance carrier was not a party to the contract for transportation. The plain language of the Act in section 20(11) places responsibility to the shipper on the common carrier (respondent here) and not on a third party not a party to the contract for transportation.

The policy of the respondent with respect to insurance and bonding of drivers is, in practice, heavily weighted against the shipper. Its advertising brochures advise the prospective shipper that his car will be insured for $3 million, as well as full coverage for all collision damage, including the deductible amount. It further advises that its drivers are bonded for $7,500 and that all this extra protection is in addition to the shipper's own insurance and gives him double protection at no additional cost.

The fact is that the liability insurance carries a $1,000 deductible provision so that, for all practical purposes since the vast majority of claims are for less than $1,000, the claims are handled directly by the respondent. The collision coverage alleged is meaningless since it is not the admitted liability collision coverage which the shipper is accustomed to in arranging for insurance on his own car.

There is no evidence of record that a bond covering drivers actually exists. If it does exist, there is no evidence of the provisions of the bond or how it provides protection for a shipper. There is no evidence that the bond, or its provisions, came into play with respect to any claim.

The misconduct of the drivers of the respondent evidences a lack of proper investigation, screening, and instruction before employment. The respondent asserts on the record that prospective drivers are investigated before driving, but there is no evidence of what the investigation consists of. Surely, methods could be devised to screen out drivers with backgrounds or propensities of irresponsibility to the end that the public could be assured that drivers would not engage in "frolics on their own" as evidenced by the testimony relating to the hundreds of excess miles beyond the most direct route called for in the contract of transportation and that the drivers would not abuse the cars entrusted to them so as to greatly increase the incidence of probable damage to a car being transported.

The policy of having a fictitious person bearing a single name but actually being one of three or more persons inhibits the shipper in his endeavor to obtain fair and reasonable handling of his claims.

The record is clear that the respondent did, in fact, move cars to automobile dealers in violation of its certificate despite the clear and unequivocal language of the certificate.

In view of the findings herein with respect to the lack of fitness of the respondent, the application in FF-359, Auto Trip USA, Inc., under common control with respondent, must be denied.

FINDINGS AND ORDER

Upon consideration of all evidence of record, the Administrative Law Judge finds that the respondent, AAACon Auto Transport, Inc., has been engaged in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in interstate or foreign commerce, including its treatment and handling of claims for damages or losses to property arising from such transportation, its issuance of, and practices in connection with, bills of lading which incorporate unreasonable provisions, and incorporate provisions which are at variance with those of the Uniform Bill of Lading governing said transportation and with the holding out to the public by said carrier regarding the insurance coverage and bonding of drivers provided by AAACon Auto Transport, Inc., for transportation performed, all in violation of section 216(b) and sections 219 and 20(11) of the Act.

The Judge further finds that the respondent has been and is performing operations not authorized by its certificate, including the transportation of repossessed, stolen, or abandoned used passenger automobiles moving to automobile dealers, in driveaway service, in secondary movements, from points in various States to points in New York, California, and Florida, in violation of section 206(a) of the Act and the terms, conditions, and limitations of said certificate, including specifically the condition restricting the authority granted therein against the transportation of any traffic moving to automobile dealers.

The Judge further finds that the petition in No. MC-C-7287 (Sub-No. 1) should be denied.

The Judge further finds that the application in No. FF-359 should be denied for the reason that the applicant is found not fit.

The Judge further finds that this decision is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore:

It is ordered, That the respondent AAACon Auto Transport, Inc., be, and it is hereby, notified and required to cease and desist from the utilization of bills of lading which incorporate unreasonable provisions and which incorporate provisions which are at variance with those of the Uniform Bill of Lading filed with the Commission as a portion of its tariff, and specifically any provision of any bill of lading utilized by the company which provides for compulsory arbitration of loss, damage, or injury claims in New York City, subject to the laws of New York State, or any other similar provision which would limit the venue in which a claimant could pursue its claim against the respondent.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from policies which negate its common carrier responsibility for the property in its possession for transportation, including the assumption of liability for the full, actual loss or damage to that property, as required by sections 219 and 20(11).

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from its policy of not promptly and thoroughly investigating and processing claims and further orders that the respondent make and keep detailed records of the results of such investigation.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from arbitrarily denying claims when the facts available to it are inconsistent with denial.

It is further ordered, That respondent be, and it is hereby, notified and required to cease and desist from attempting to impose responsibility on its shippers' insurance carriers for loss of or damage to property it receives for transportation.

It is further ordered, That respondent be, and it is hereby, notified and required to cease and desist from advertising that it insures for liability in any amount unless it discloses to prospective shippers the precise kind and type of insurance carried, including deductible amounts, or that it bonds its drivers, unless it is made clear what type of bond is provided and the kind and manner of protection to its shippers.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from the employment of casual drivers utilized by it without thorough investigation and screening, and it is ordered to make and keep detailed records of the results of such investigation.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from its policy of not properly instructing and controlling its agents and drivers so that shippers' autos will not be abused or used for any purpose other than transportation from and to the origin and destination points by the most direct routes.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from misrepresenting the identity of its officer, employee, or agent, with whom the shipper deals on matters relating to claims.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from the performance of any operation in interstate or foreign commerce found herein to be unlawful or unauthorized, specifically the transportation of autos moving to automobile dealers, and thereafter to abstain and refrain from the resumption of any such operation unless and until appropriate authority therefor is obtained.

It is further ordered, That upon the willful failure of respondent to comply with any of the provisions of this order, the certificate issued to the respondent, AAACon Auto Transport, Inc., in No. MC-125308 and sub-numbers thereunder, may be suspended or revoked in whole or in part.

It is further ordered, That the application of Auto Trip USA, Inc., in No. FF-359 be denied for lack of fitness of the applicant.

It is further ordered, That the petition in No. MC-C-7287 (Sub-No. 1) be denied.

It is further ordered, That the statutory compliance date after which the respondent shall be held to be in willful violation of this order, shall be the 30th day following the service of a notice that this order has become effective as the order of the Commission, in the absence of a stay or postponement by the Commission, or the timely filing of exceptions.

Dated at Washington, D. C., this 15th day of November, 1973.

By the Commission, Joseph A. Reilly, Administrative Law Judge.

ROBERT L. OSWALD,

(SEAL) Secretary.

APPENDIX A

Summary Of Evidence

Lesley H. Browder, Jr., a university president, arranged with the San Francisco office of the respondent in July 1970 to have his 1966 Volkswagen auto transported from Stanford, Calif., to Port Washington, N. Y. Browder had a complete checkup on the car made by a Volkswagen specialist before it was turned over to respondent for transportation. The bill for repairs and adjustments bore the notation that the car was "okay for an extended trip". The car was picked up by the respondent's driver on August 10, 1970. The Browder family then departed for Port Washington.

Several days later Browder received a telephone call from the driver of his car to advise that the car "threw a rod" and had to be towed to a garage in Reno, Nev. Browder called the agent of the respondent in San Francisco and was told that since a "mechanical failure" was involved he (Browder) would have to have the car repaired before onward delivery could be effected. Browder authorized the repairs, which amounted to $358.61.

A second driver of the respondent picked up the car in Reno on or about September 3, 1970, and a second bill of lading, never signed by Browder, was mailed to him. The car did not arrive in Port Washington as scheduled and Browder spoke to Bob Maxwell in the New York office of respondent and was told not to worry as the cars were often late.

On September 15, 1970, Browder received a telephone call from the San Francisco agent of the respondent to advise him that his car had been in an accident in East Ely, Nev., about 320 miles from Reno. The agent told him that "there was a rain storm and the driver drove off the shoulder, then attempted to right himself and turned over, totalling the car. You will hear from our insurance company immediately." No reason was given for a transit time of 12 days for a 320-mile trip.

There followed numerous telephone calls and letters between Bob Maxwell and Browder in which Browder sought a report of the accident and Maxwell consistently refused to supply one. On October 6, 1970, Browder received a letter, signed by Maxwell, which declined his claim for the reason that the damage was caused by operational failure.

Browder then retained an attorney who wrote three letters to the respondent during October and November 1970. No responses were received to these letters.

Through the Motor Vehicle Bureau in Nevada Browder traced his car to a garage in East Ely. He was advised by the garage in late October that it had received the car in a "totalled" condition on September 5 and that there was due a towing charge of $117 plus storage of $1 per day.

The net result was that Browder had to buy a new car for $2,200, pay $358 to put a new motor in the old car which he never received, and pay $110 for transportation services that were never rendered.

John J. Slattery arranged with the San Francisco office of the respondent to transport his car from San Francisco to Rocky River, Ohio. The car was picked up on August 23, 1970. When the car had not arrived on August 30, Slattery called the Cleveland office of the respondent. He was told not to be concerned. Several days later he called again and was advised the car was on the way but that the driver had had a short delay. After several additional calls to the Cleveland office without positive results, Slattery wrote to the respondent's office in New York City on September 6 seeking the whereabouts of the car and when he could expect the delivery. On September 11 he received a response from Bob Maxwell who stated he knew where the car was, that the driver had gotten sick and that he was making arrangements with the respondent's Lawrence, Kans., office to pick up the car.

Slattery filed a claim with his insurance company for loss of his car and on September 23 the insurance company wrote to the respondent in New York City seeking information on the whereabouts of the car. It received a reply on September 30 of Bob Maxwell stating "please be advised, we may be able to recover the car. We will let you know shortly".

Other fruitless communications followed until the latter part of October when Slattery learned his car was in a garage in Warren, Kans., and had been there since August 30 and was damaged. An adjuster for the insurance company examined the car at that point, found it was driveable, and had the car transported to Cleveland by the respondent where repairs were made. On November 14 he filed a claim with the respondent in the amount of $1,783.11, including $884.24 for repairing damage to the car and $222.92 for loss of personal belongings. The claim has not been honored. It is noted that the respondent alleges fraud on the part of Slattery with respect to his claim. However, all of the evidence as to fraud is in the form of self-serving declinations by the witness for the respondent.

Joseph S. LaFrazia arranged for transport of his car from Los Angeles to New York City. The car was a Corvette high-performance model which was, in part, custom designed. The car was picked up in Los Angeles on December 9, 1969. On December 13 LaFrazia received a telephone call from the driver of the car who told him he had driven the car to San Francisco and that when he tried to start it on that day he found that the clutch, flywheel, and throw bearing were inoperative. He had the car towed to a Corvette dealership. LaFrazia talked to the mechanic who told him the car had been driven at speeds well in excess of 100 miles an hour. LaFrazia asked about the luggage rack attached to the back of the car which contained the front bumper assembly and stock exhaust system. He was told that the rack was not on the car and the driver stated it had been thrown off the car while he was traveling 60 miles an hour on the expressway.

LaFrazia called the agent of the respondent in San Francisco and was told that the car needed 4 new tires. The father of LaFrazia subsequently talked to the above agent who told him the tires on the car were not suitable for highway driving. The elder LaFrazia told the agent to call Goodyear Tire Company in San Francisco and have proper tires mounted on the car. He told the agent to have Goodyear call him collect and he would wire the money to defray the cost of the tires just as he had done for the repairs. The respondent refused to transport the car and it was moved to New York City by rail at a cost of $384. The witness for the respondent said the car was not transported because the LaFrazia family could not afford the cost of the tires. Little weight can be given this evidence since the LaFrazia family have already paid $350 for repair to the car, had offered to pay for new tires and did pay $384 for rail transport.

Gerhard Petzhall is attorney for John Levy, Jr., who arranged with the respondent for transport of his car from St. Louis, Mo., to Quantico, Va. The car was involved in an accident at Aiken, S. C., about 350 miles off route between the above points. To secure any damages to the other car involved, the Levy car was attached by the South Carolina authorities since it bore out-of-State plates. The main problem here was the inability or unwillingness of the respondent to have the attachment lifted.

Dr. Sing, a university professor, arranged for transport of his car by the respondent from Los Angeles to Washington, D. C. It was delivered on time but he claims the car was delivered in filthy condition, with some arm rests broken, a rubber window lining missing, excessive wear on one tire, and with 700 added miles over a direct routing between the above points. The driver was a 21-year old member of a disbanded rock group despite the fact that he had been told by a representative of the respondent that drivers under 25 years of age were never used. He wrote to the respondent claiming compensation in the amount of $200 for the above damages. There followed a series of acrimonious letters culminating in a denial of the claim based on the fact that the doctor had paid the driver on delivery of the car and had signed the freight document, thus relieving the respondent of responsibility for the damages claimed.

Jean Blake White, a secretary, arranged for transport of her car from Los Angeles to Baltimore, Md. She took her car to a Volkswagen dealer in Los Angeles to be checked, have necessary repairs made, and be otherwise prepared for a cross-country trip. On December 15, 1969 the car was picked up and on the following day Miss White departed for Baltimore. On December 21, 1969 she received a phone call from the driver and was advised that her car had broken down in Death Valley Junction and that the car had a "turned or split camshaft" and had to be towed to Las Vegas, Nev. He requested $175 be wired to him in Las Vegas to cover the towing cost. This was done and the wire included instructions to have the repair facility call her for further instructions.

The driver called Miss White on December 21 and told her that the car was at the Sunland Volkswagen facility in Las Vegas. She told him she wanted an estimate on the cost of repairs before repairs were initiated. She called Sunland the next morning and was informed the repairs had been made on the authorization of the driver and that the bill for repairs was $429.82. The bill clearly reflects that the driver did authorize repairs and a mechanic's lien was also authorized despite instructions of respondent to driver that repairs over $20 could not be authorized by drivers.

She advised the Los Angeles office of respondent that the repairs were made without her consent and was told not to worry, the driver could not do that. She was told further dealings should be with the New York office of the respondent and to send the $50 driver's fee to that office. She did so on December 26, 1969 and requested claims forms. In reply she received a letter signed by Bob Maxwell stating the respondent was ready to move the car as soon as she paid for the repairs. He also told her that the respondent "positively" had not authorized repairs to the car. She then called Bob Maxwell who told her that the respondent would not accept responsibility for the damages since they were caused by mechanical difficulties. On January 2, 1970, she received a letter from the law firm of Zola & Zola repeating the Maxwell advice.

Miss White then hired an attorney to pursue her claim. He cited the condition of the car prior to the pickup, the unauthorized repairs, the fact that the car had been driven 1,700 miles from pickup at Los Angeles to the point of accident at Death Valley Junction, a distance of 300 miles, and the violation by the driver of the terms of the bill of lading and transmitted a copy of the repair bill reflecting the authorization for repairs by the driver. The Zola response was that despite authorization by the driver the only responsibility of the respondent was for the difference, if any, between the cost of repairs and the reasonable cost if Miss White could prove that repair cost was unreasonable.

Her lawyer advised Miss White that cost of suit against the respondent would be excessive, absent the whereabouts of the driver. Subsequent communications with respondent availed her nothing. On March 3, 1970 respondent advised her that it had a claim against her for delay in delivery under the terms of its bill of lading. Understandably, this disturbed her greatly.

In summary, Miss White was forced to sell the car to Sunland Motors for $500, or $70.18 more than the cost of the repairs. She had paid $1,156.95 for the car on June 21, 1969. She paid $125 for towing charges, absorbed the cost of numerous telephone calls, and paid for a car transport which was never completed.

Lewis Jacobs testified with respect to the claim of Mrs. Hortense Whitney, wife of a serviceman based in Massachusetts at the time of the car transport. The husband of Mrs. Whitney was transferred to the State of Washington in the fall of 1969. She arranged with respondent to transport her car from Boston to Spokane, Wash. The car was picked up on October 27, 1969. Following a conversation with Mrs. Whitney, Jacobs called the Boston office of the respondent to report a missing car. He was told to contact the New York office of the respondent. Subsequently, he received a collect call from Bob Maxwell to inquire about the whereabouts of the owner's insurance. Jacobs replied that he wanted to find out where the car was and what happened to it and that the finding of the insurance policy was irrelevant to these questions and pointed out that his client had to report an accident to the Massachusetts authorities. Maxwell replied that he would call him again but he did not.

Jacobs did get a handwritten note from the respondent indicating the car had gone off the road somewhere along Route 50-6 in Utah. He wrote to the sheriff of the county of Salt Lake City, Utah to ascertain if a report of accident had been filed and was advised none had been filed. He then wrote to the State Department of Motor Vehicles in Utah seeking the same information and received a negative reply. He finally got a report of the accident from the U. S. Department of Transportation 7 months after the accident. The report was dated November 10, 1969 and was purported to have been signed by the respondent's driver. Mr. Jacobs testified that the signature of the driver is exactly the same, and was written by the same person who signed Bob Maxwell's signature to the report. On behalf of his client, he filed suit against the respondent in Suffolk Superior Court in Massachusetts alleging a breach of contract, conversion of motor vehicle, fraud and deceit, failure to carry insurance, and carelessness and negligence in the operation of the car.

After issue was joined in the lawsuit, his client's sister brought to him a subpoena from the Supreme Court of New York together with an order to show cause why his client should not submit to arbitration in New York. Service of the order was made by registered mail at a Roxbury, Mass., address, but at time of delivery Mrs. Whitney was living 3,000 miles distant from that point. Jacobs decided not to answer the order, preferring to let it go by default and an order was issued that the case should go to arbitration.

In the Massachusetts suit, Jacobs propounded interrogatories to the respondent. In answer to one of the questions as to who was driving the car and what had happened to it, one of the Zola's stated under oath, subject to the pains and penalties of perjury, that he did not know and that no agent or servant of the respondent had transported the car. Subsequently, Jacobs was served with a contempt process alleging that the terms of the original order in the Supreme Court case had been violated because of the issuance of the order directing interrogatories and his client was held in contempt and continuing contempt.

Mrs. Whitney never got her car back since the Department of Transportation advised that it was wrecked and beyond repair.

Lewis Nadler, an insurance broker, contracted with respondent to transport his car from Madison, Wis., to Bayside, N. Y. The car was picked up on October 25, 1969 and on the following day was involved in an accident in Toledo, Ohio. Shortly thereafter, he received a letter from the police department of Toledo advising him that his car had been in an accident and had been towed to the Competition Auto Body Shop in Toledo. Nadler then called the respondent and asked when they were going to have the car fixed. He was told the repairs were completely his responsibility but was given no reason for the disclaimer of responsibility on the part of respondent. He called the body shop and was given an estimate of $800 for repairs. He then called the respondent and made two trips to the New York office of respondent and spoke to the Zola brothers who told him the respondent would do nothing. He then contacted his insurance company and arrangements were made to repair the car. The insurance company paid approximately $700 and Nadler paid the $100 deductible.

Respondent picked up the car on December 15, 1969 in Toledo to complete delivery. On the following day the car was involved in another accident when, as claimed by the respondent, a deer hit the car on a highway in Pennsylvania. Temporary repairs were made at a local garage by replacing the car's 8-cylinder radiator with a 6-cylinder one. The cost was $127. Permanent repairs were made by a repair shop in Bayside at a cost of $540.85.

Nadler filed a claim with respondent for the total cost of both accidents. The respondent denied the claim on the grounds that the first accident was caused by mechanical defect and the second by an act of God. Respondent sent him a check for $100 in full settlement which Nadler refused and never cashed. Subsequently, respondent took the position that the causes of both accidents were acts of God, for which, under the Uniform Bill of Lading, respondent was not responsible.

Gerald F. Bracken arranged to have his car transported by the respondent from Ft. Lauderdale, Fla., to Lawrence, Mass. The car was picked up on March 31, 1970. On April 2, 1970, the driver called Bracken to advise him that the car had been broken into in Atlanta, Ga., and the left door glass had been broken and requested instructions. Bracken told the driver to have the glass replaced and he would reimburse him on delivery of the car. This was done at a cost of $43.47 and the car was received on time and in satisfactory condition.

On April 7 Bracken wrote the respondent's agent in Ft. Lauderdale reciting the above facts and asking reimbursement of the $43.47. He received a form letter dated April 13 requesting certain information. He filled in the form and returned it to the respondent. On May 15 he received a letter from the respondent informing him that, in accordance with the terms of its Uniform Bill of Lading, it must decline all claims in which the owner had signed for receipt of the car in satisfactory condition. The bottom of the letter contained writing below the signature of the sender stating:

> Your claim is also denied as payment to the driver on delivery means a satisfactory delivery as per the Uniform Bill of Lading.

Bracken responded on May 18 pointing out that delivery was only satisfactory because the glass had been replaced at his expense, that he had not received the bill of lading when the car was picked up but that it was mailed to him at Lawrence, Mass., and that he was claiming reimbursement for the cost of replacing the glass. Mr. Bracken produced his copy of the bill of lading which contained the signature of the driver but not his.

In its brief, the respondent stated that after hearing the testimony of Bracken, and in light of the unusual circumstances, and further because of the age of the gentleman, and the confusion that appeared to have existed, the claim was paid and the matter was concluded.

Irving Moross arranged with the respondent to transport his 1964 Buick from New York City to Palm Beach, Fla. The car was delivered after darkness had set in to the wife of Moross on February 16, 1970. The driver collected $27.10

from Mrs. Moross for repairs to the starter which had failed en route. The next day she found the car was in poor operating condition. The pipe from the manifold had been damaged or destroyed, the distributor was burned out, and other deficiencies resulted in repairs costing approximately $200.

In April 1970 Moross received in the mail two tickets for parking violations occurring on February 14 and February 16 in Miami, Fla., 80 miles south of Palm Beach. On April 28 he wrote to respondent and made a claim for $27.10 for starter repairs, $200 for repairs to the car, rental of an auto at $10 a day necessitated by late delivery of his car, and the reimbursement for fines paid on the parking tickets. On May 12 he received a form from the respondent requesting certain information which he promptly supplied.

By letter of May 26, respondent advised it was declining the claim since it must, under the terms of its bill of lading, decline all claims where an owner signs a receipt of delivery of a car in satisfactory condition. It did, however, enclose a check for $7 for the parking tickets.

The witness for respondent testified that in his opinion the claim of Moross was not justified, and, in fact, it was suggested that it would be appropriate for the Commission to conduct a further investigation to determine whether or not shipper fraud was involved.

Benedict W. Harrington, a lawyer, arranged for the transport of his car from Carteret, N. J., to Yakima, Wash., for delivery to his son. The car was picked up on May 6, 1969 and arrived in Yakima on May 14. The son paid the driver $24.38, which included $9 for a heater hose and $15 for towing.

The son of Mr. Harrington advised his father that the driver, upon delivery, told him the car had performed well, except at speeds of 80 to 90 miles an hour when he noticed a slight shimmy in the front end, that he had gone initially from New Jersey to New York State in the Catskill region to visit his parents, then west to Chicago to visit friends, then to California, including visits in Burbank, Palo Alto, and thence to Portland, Oreg., to deliver passengers he had picked up en route and then to Yakima;

that during his trip through Nebraska the car over-heated and finally stopped, at which point it was towed to the garage in the next town and repairs were made in the amount of $24.38 for which he sought reimbursement and this was done; that he had completed law school and was on a vacation trip to Alaska before starting his law career. The son further stated that he had checked the speedometer against the figures sent to him by his father and it indicated approximately 1,500 miles more than the direct trip from Carteret, N. J., to Yakima, which was confirmed by his own experience when he had driven his car from Carteret to Yakima.

The car which was picked up in Carteret on May 6 was delivered at Yakima on May 14, 1969. On May 15 Harrington, based on information given to him by his son, wrote to the respondent and recited the facts above and requested reimbursement for $24.38. Since he received no reply, he wrote substantially the same letter to respondent on June 5. On June 13 he received a reply stating that the respondent must decline all claims in which the driver is paid and the freight document signed indicating satisfactory condition of the car on delivery. On July 23 he received a letter from Ralph Zola acknowledging receipt of copy of the complaint filed by Harrington with the Commission and repeating the "clean receipt" declination.

Sanford J. Rosen, an attorney and law teacher, arranged with respondent to transport his car from New York City to Austin, Tex. The car was picked up in New York on August 20, 1970 and was delivered on August 27. The wife of Mr. Rosen signed for receipt on the bill of lading. Several days later, while driving, Rosen had occasion to adjust the side rear view mirror which had an interior mechanism by which the angle of the mirror was adjusted and discovered that it had been taped in place. When he touched the interior control, it fell out of focus and out of control. Rosen wrote to respondent in September 1970 and received a reply dated October 6 signed by Bob Maxwell advising that it had contacted its insurance company and it had been determined that the damage was caused by operational failure (no representative of respondent or its insurance company examined the car after delivery) and it was further determined that there was no negligence on the part of the driver. Other correspondence in the same main accomplished nothing but that the respondent relied on its "clean receipt" declination policy.

Solomon Clausner, an attorney and accountant, arranged to have his car transported from Miami Beach, Fla., to Ft. Lee, N. J. He delivered the car to the office of the respondent in Miami Beach on April 11, 1970, and left the keys to the car at that office. The car was delivered on April 21 when Clausner was not at home, and the drivers, 4 young men, came to his apartment and told his wife the car was in the garage of the apartment and that everything was alright. When she asked for the keys, she was told that it could not be found at the time the car was dispatched and they had been given some wire to cross the wires each time they had to start the car. Mrs. Clausner thought this peculiar and called the Miami Beach office of respondent and that office confirmed the story. She asked the young men to wait until Mr. Clausner got home but they told her they were not paid for waiting time and left.

When Clausner got home shortly thereafter he tried to start the car and he could not. Upon lifting the hood, he discovered that under the hood was a shamble of loose wires. He immediately contacted the American Automobile Association and also called the New York City office of the respondent and told them what had happened. The respondent told him that he should proceed to have the car repaired on his own. Therefore, he contacted the American Automobile Association and the car was picked up and towed to a station in Ft. Lee, N. J., where it was repaired. The copy of the repair bill contains a notation that the work done was to "repair damage done to 1968 Cadillac due to running car with wires crossed because no key was used, causing it to burr out starter, coil, wires due to wrong connection of wires". The total cost of repairs was $147.97.

On April 22, he received a note from the Miami office of the respondent enclosing the ignition key, and stating that "so sorry for misplacing your keys, but could not find them anywhere until after car left. Hope everything turned out alright".

On April 23 he wrote to the respondent in New York City, Attention: Robert Maxwell, and gave the details of his claim including the fact that the respondent's dispatcher in Miami could not find the ignition key which had been left there by him and that the Miami office had instructed the driver to "jump the wires" and drive the car to Ft. Lee, N. J., in that manner, and that the Miami office had verified this fact by phone and by its note enclosing the ignition key. He also enclosed a copy of the repair bill.

The witness received a mimeograph form from the respondent asking for certain information which Clausner provided. He then received a form letter dated May 15, 1970 from Michael Brady of the respondent's New York City office which stated in substance that the respondent deeply regreted the difficulty he had had, that it had immediately contacted its insurance company on his behalf, and that it had been determined that, in accordance with the terms of the bill of lading, a copy of which he supposedly retained, it must decline all claims in which, as in this case, the owner had signed for receipt of the car in satisfactory condition. The letter also contained a handwritten postscript which indicated that his claim was also denied, as payment to the driver on delivery means a satisfactory delivery as per terms of the bill of lading. On receipt of the letter, the witness wrote on May 26 objecting very strongly to respondent's handling of the matter and repeating the factual situation. He received an answer by letter dated May 29 which stated, in substance, that mechanical difficulties were the responsibility of the registered owner, when respondent's driver delivers the car any representative of the owner can sign the bill of lading and receive the car, that the driver does not have to wait until the registered owner comes home to sign for the car since the driver does not get paid for waiting periods. The letter was signed by Bob Maxwell.

Clausner could not produce the bill of lading which covered the movement of his car as he had never received the copy of the bill of lading. At the hearing, the Bureau produced a photocopy of the bill of lading which was signed by an individual on behalf of the shipper with the name Al Fromen and by another individual, purportedly the driver. The document did not contain the signature of either Mr. or Mrs. Clausner. Clausner testified that he had never seen that document, had no copy of it, and that the name Al Fromen was unfamiliar to him.

As a result of a complaint to this Commission by Clausner, the Commission received a letter from the law firm of Zola & Zola, the substance of which was that the car was in driveable condition when tendered to the consignee, that Clausner had not offered any evidence to substantiate his apparently unfound claim, that Zola & Zola had given careful attention to this matter but felt, in the absence of any additional facts, compelled to deny his case on the grounds theretofore stated. Clausner thereupon wrote to the Commission to the effect that his previous testimony with the additional facts that at the time he called the respondent the day following delivery of the car Bob Maxwell suggested of all the information be submitted to him and that he would try to have the claim paid and that by his letter of April 23 he complied with Maxwell's request including sending a copy of the repair bill which not only detailed the nature of the damage but the cause thereof.

In its brief, the respondent stated that after hearing Clausner testify that the carrier was able to substantiate information which it had been unable to secure at the time the claim had been denied. After hearing the testimony of the carrier the respondent believed the claim was valid and represented a proper obligation and paid the claim. In rebuttal, the witness Clausner then testified that he had spoken to Bob Maxwell several times and he had described the note sent to him by the respondent's agent in Miami and told him that the key had been returned to him (Clausner). In addition, the letter of Clausner dated April 23, 1970, was addressed to respondent at its New York City office, Attention: Robert Maxwell, and clearly sets forth the facts and actually quotes the note received from the Miami agent and the fact that the ignition key was enclosed with that note.

Don Clendenon, a professional baseball player, arranged to have his car transported by the respondent from St. Petersburg, Fla., to Flushing, N. Y. The car was picked up on April 15, 1970. The day prior the car was serviced by a Dodge dealer in St. Petersburg and was found to be in "A-1 condition". When the car did not arrive as scheduled, Clendenon called the St. Petersburg office of the respondent and was told that the car should be there. He also called the New York office of the respondent and was advised that the car was en route or should be there. He then made a second call to the St. Petersburg office and was advised that the driver had the car at his home in New York City and was having difficulty with it and gave the telephone number of the driver to Clendenon. Clendenon called the driver, who told him that the gears had locked and that he had just about completed the repairs and would deliver the car to Shea Stadium. Clendenon told him that he was not at Shea Stadium and that he was waiting for his car at his home on East 18th Street, New York City, and told the driver to bring the car there. When the car was delivered, the gears were stripped out except for neutral and drive. The driver wanted his money at that time but Clendenon told him to wait because he would not take receipt of the car in its then condition. Clendenon called a Dodge dealer in Brooklyn to tow the car back to the garage and ascertain what the damages were. The garage informed him that the gears had locked and all the gears were stripped. When asked the cause, the garage replied that jumping from drive to low to brake the car at accelerated speeds, and, for the gears to lock, it might have been thrown into reverse accidentally.

The driver called Clendenon and told him that he needed the money due on delivery because he was leaving town. Clendenon told him that he didn't know whether he should pay him or not and that he wanted to take the matter up with the respondent. He called the St. Petersburg office of the respondent and was told to give the driver the money, that the driver was not responsible, he just delivered the car, and that the respondent would see that Clendenon's car was looked after. Clendenon then paid the driver the amount due on delivery. Clendenon then got in touch with the respondent and was referred to his own insurance company. On April 22, 1970 he wrote a letter to Robert Maxwell at the New York City office of the respondent and recited the above facts. By form letter dated July 15, 1970, respondent declined Mr. Clendenon's claim based on a signed bill of lading and also on the fact that he had paid the driver on delivery.

Subsequent to repair, the car constantly gave Clendenon trouble, causing him to be late for work and incurring fines of $400 for such lateness. In order to avoid the constant trouble the car gave, Clendenon traded it in for another automobile.

Clendenon was understandably distressed that the respondent had told him to pay the driver and subsequently took the position that it was not responsible because he had paid the driver.

In addition to the "clean receipt" notation, the respondent apparently takes the position that since the car was still under warranty and was repaired without charge to Clendenon by the dealer for the manufacturer it had no responsibility in the matter.

Brigadier General William R. Wolfe, Chief of Staff of the Alaskan Command, United States Army, testified for the Department of Defense, an intervenor in this proceeding. General Wolfe was based in Washington and under a permanent change of station he was transferred to Alaska in November 1969. Under a permanent change of station, it is the policy of the Army to transport the private automobile of the person being transferred from a port of embarkation to the transfer point and it is the responsibility of the individual being transferred to deliver it to the port.

He arranged with the respondent to have his car transported from Ft. Myer, Va., to the port of embarkation at Seattle, Wash. The car was picked up on November 12, 1969. The following day General Wolfe departed for Alaska by air.

The expected arrival date in Seattle was between November 25 and December 3. On November 23 General Wolfe inquired of the port whether or not the car had arrived and was informed it had not. He called a Colonel Hurbert in the Pentagon, Washington, D. C., and asked him to check on the vehicle. He was informed that the car had not yet left Washington, D. C. This was subsequently confirmed by a letter from the respondent indicating that the car would be shipped on or about December 1 and would arrive in Seattle approximately 7 days later. Later, he contacted Colonel Hurbert who indicated that the car had departed Washington, D. C., on December 29. On January 5, 1970, he again contacted the port at Seattle which indicated that the car had not yet arrived. On January 15, in response to inquiries by the port directed to the Seattle office of the respondent it was learned that the car had been left in "Chiefs" garage in "Wahl", S. Dak., where it required unspecified repairs totalling $110. No information as to the nature or cause of the damage was provided.

BEST COPY AVAILABLE

After several telephone calls to the Seattle, Wash., and Washington, D. C., offices of the respondent, General Wolfe ascertained that "Wahl" was actually Wall and was located near Rapid City, S. Dak. He then called the Ellsworth Air Force Base which is near Wall and requested the Provost Marshal to endeavor to ascertain the location of the automobile and its status. The same day the Provost Marshal reported back to him that the car was in Cliff's Garage in Wall, S. Dak., and that the engine was severely damaged. The car had arrived in Wall on January 9, 1970 and the driver immediately departed the area.

General Wolfe was told by the garage in Wall that the car had been driven while it was overheated to the point that several pistons had holes in them,and a complete overhaul of the engine was necessary. He did not have the car repaired because he believed it to be the responsibility of the respondent to have repairs made. His position was that the mechanical defect, whatever caused the car to overheat, did not cause the damage to the engine, but that the continued operation after mechanical difficulty caused the damage which was not his responsibility.

General Wolfe described his car as being a 1964 four-door Ford with approximately 30,000 miles, in good condition; that it had been his car from the time it was new and was regularly maintained. He had it checked out within 3 weeks before the car was picked up and on that day he had it checked over again by a mechanic, had it lubricated, oil changed and antifreeze added for protection to minus 65 defrees Fahrenheit.

General Wolfe several times asked the respondent to assume its responsibility in the matter. He had asked for claim forms by telephone and by a letter of February 24, 1970, and was informed only that the respondent declined his claim.

General Wolfe stated that his loss was $2,200, consisting of the value of the car at $1,200, $435 worth of repairs, and storage charges applied against the car in order to have the garage owner release it. The foregoing did not allow anything for his lack of use of the car for two years and cost of renting cars in Alaska for some period of time.

The respondent stated it was advised by the garage in Wall that in its opinion the breakdown in the vehicle was caused by overheating, indicating that the car froze during the extreme cold weather.

In addition to declination of claim on the ground of mechanical defect, the respondent asserts that no written claim for specific amounts had ever been filed despite its bill of lading provision that a claim must be filed in writing within 9 months after notice of loss. It should be pointed out that in his letter of February 24, 1970, General Wolfe did request claim forms from the respondent which were never received. The respondent consulted the Blue Book on valuation of cars and determined that at the time of transport the value of the vehicle was between $250 and $300, depending on whether the value was to be computed on the East Coast or the West Coast. This compares with the $1,200 value placed on the vehicle by General Wolfe.

Frank Coggins, president of a company in Elberton, Ga., had a daughter attending college at Denver, Colo. In February or March 1971 he purchased a new 1971 Oldsmobile convertible 442, four on the floor, stereo tape, mag wheels, a very fancy sports car convertible. The car cost in excess of $5,500. In June 1971 his daughter requested Coggins to have the car shipped to her at Denver. Arrangements were made through the Denver office of the respondent to have the car transported from Elberton, Ga., to Denver, Colo. The secretary of Coggins had several conversations with a Christina Thompson who was the secretary of the manager of the respondent in Atlanta about how the car was to be picked up. The manager of that office was one A. R. Donath. Eventually, it was decided that the car would be picked up in Elberton, Ga. The car was picked up at the home of the secretary of Coggins on June 30 by Christina Thompson and a man introduced only as "Bob".

On July 1 or July 2 the secretary of Coggins called Christina Thompson and was advised that a driver had not been found since it was a little difficult over the holiday but that the car would certainly move out sometime the following week. When the secretary of Coggins indicated that she would call on Monday July 5, she was told that the respondent's office would be closed on the 5th but to call back on Tuesday July 6. On July 6 Coggins called the Atlanta office and spoke to Miss Thompson who told him she did not know whether or not a driver had been found and that she would call back later in the afternoon. She did not call back as promised and he called again on the following day and Miss Thompson put Mr. Donath on the telephone. Donath told him that he was sorry to advise that the car had been taken to Florida, destination Palm Beach, and had been involved in a serious accident in Jupiter, Fla. Donath indicated that he personally had been the one to take the car 1,200 to 1,500 miles out of the way. Donath confirmed the telephone call in a letter, the substance of which was that the car the respondent had undertaken to transport to Denver, Colo., had been involved in a serious accident on the Sunshine State Parkway a few miles from Palm Beach, Fla., where it was being taken by Donath to a driver who would then take it to Denver. Donath advised him in the letter that Coggins would be hearing from the New York office of the respondent within a few days. The home office did not contact Coggins. He then stopped payment on the check he had mailed to the respondent for transport of his car. Coggins called the agent in Denver who stated he did not know about the accident but would call the Atlanta office. Coggins then called the Florida Turnpike Control and was told of the accident, which involved 6 cars and 18 people and that his car was the car which caused a series of collisions. Coggins then obtained a copy of the Florida accident report which indicated that the driver was Arthur Robert Donath and that the passenger in the car was Christina Thompson of the address in Atlanta originally given to him as the office of the respondent. The report reflects that the date of the accident was 12.30 p.m. on July 3, 1971. Coggins testified that when he called the office of the respondent in Atlanta on July 6 he was told by Miss Thompson that the car was not there, that she didn't know whether a driver had been found or not, that the workload of the holidays was such that she would call him back that afternoon, but made no mention of the fact that the car had been wrecked or that she had been in the wreck 3 days prior to the call.

A long series of letter and telephonic communications ensued between Coggins and the respondent involving liability, mitigation of damages, third-party liabilities as a result of the accident, the filing of a formal claim, and suggestions that Coggins seek reimbursement from his own insurance company.

Coggins had made claim on the respondent in the amount of $5,323, consisting of fair market value of the vehicle at the time of the accident of $5,200 and a fair market value subsequent thereto of $269, resulting in damages of $4,931, plus $242 for towing and storage of the vehicle and $150 in travel to the State of Florida. Eventually, Coggins did make claim on his insurance company for the damages suffered to his car which had a $250 deductible provision. His insurance company denied all liability in connection with the accident and filed suit, under its subrogation clause, against the respondent in Fulton County, Ga. The car damage portion of the suit was settled by the payment of $3,775 by the respondent, considered to be the actual fair market value of the vehicle at the time of the accident.

Mary M. Weller testified that in April 1970 she was the consignee of a shipment of her son's car from California, where he was then living, to her home in Decatur, Ga. When the car arrived at her home at 8 p.m. on April 17 it was dark, and the driver drove the car into the carport. She turned on the lights, having been told by her son to check the car with a bill of lading to detect any flaws. She and the driver checked it over with a flashlight for scratches and dents. When the inspection was finished, the driver had her sign the bill of lading. On April 20 she called her son and he inquired about his "luxurious" spoke hubcaps and she told him they were not on the car. He asked her to look in the trunk and upon doing so she discovered that not only were the hubcaps not in the trunk but the spare tire and its hubcap was also missing.

She wrote to the Los Angeles office of the respondent on April 21 and reported the hubcaps and spare tire missing. In response, she received a form letter dated May 4, 1970 requesting information which she supplied. The respondent then sent its form letter of declination indicating her claim was denied because she had signed the bill of lading and paid the driver.

The witness indicated certain variances between her copy of the bill of lading and the copy taken from the files of the respondent which was shown to her at the hearing, including apparent erasures on the copy of the respondent and differences in the checkmarks, appearing in the "condition report" part of the bill in the blocks next to "spare tire-wheel" and "hubcaps". In its brief, the respondent stated that when Mrs. Weller appeared at the hearing her testimony and demeanor was such that it was believed by the respondent that the claimant was honest and the claim just. As a result, the claim was paid.

Bert Levine, an attorney and son of Irving Levine, testified that he personally handled the claim of his father relating to damages sustained by a car owned by his father during transport by the respondent on August 21, 1971 in Rocky Mount, N. C. The elder Levine arranged for the transport of his car from New York City to West Palm Beach, Fla. The car was picked up by the respondent on August 20, 1971. The following day the driver called the elder Levine from Rocky Mount, N. C., to tell him that their car had been involved in an accident at that point. Levine spoke to the driver on the phone on August 21 and was told that there was no other car involved in the accident and that he (the driver) had dozed off at about 7:15 a.m. and went through the barricade at the intersection of Route 301 and 95. The driver advised him that there was considerable damage to the car and that it had been towed to a garage.

Levine called the respondent at its New York office the following Monday morning and spoke to Robert Maxwell, who asked him whether or not his parents had insurance and if they had collision insurance. Levine replied that his parents did have insurance but not collision insurance. Maxwell asked for proof of the fact that they had no collision insurance and Levine sent him a copy of the auto policy showing coverage for Mr. Irving Levine. There followed a series of communications between Levine and the respondent, in which, among other things, Levine was requested to obtain photographs of the damage to the car for the respondent which was done. On September 24, 1971 Maxwell sent Levine a form letter to the effect that the respondent had received his complaint, regretted the difficulty in the transport of the vehicle, had thoroughly investigated the matter, had contacted its insurance company and it had been determined that the damage to the car was caused by operational failure and furthermore that there was no indication of negligence on the part of the driver.

The report of the driver of the car concerning the accident stated "I had just finished changing a defective tire. Pulling back onto roadway, I turned to see traffic in rear and went through wood barricade which was closing off normal thoroughfare". In his conversation with Levine on August 21, the driver had told him that he had dozed off at about 7:15 a.m. and went through a barricade. The accident report of the North Carolina State Highway Patrol described the condition of the road and the weather at the time of the accident; the road was dry and straight and level and the weather was clear and daylight; there were no defects noted with regard to the condition of the car; blank No. 5 of the report, which would have been checked had there been defective tires on the vehicle, was not checked; a checkmark appeared in the block captioned "no defects noted"; there was no vision obstruction; and the driver's physical condition was described as "asleep".

The respondent stated it received a copy of the Highway Patrol accident report in the early part of October and on October 15 Levine received a letter from Maxwell which stated that "after careful review of our adjusters, the maximum allowed is ... $243". Levine had filed suit against the respondent in the New York courts claiming damages in the amount of $852.15. After further negotiations between the parties an agreement was reached to settle the claim for $705.

Mrs. Carl Ferreira testified that in November 1970 she made arrangements with the Miami office of the respondent to transport a repossessed vehicle from California to her home in Miami, Fla. The Ferreira's, who are not in the finance business, were repossessing the car after Mrs. Ferreira's cousin defaulted on a note which had been co-signed by Mr. Ferreira to enable the cousin to buy the car. The Ferreira's, who could not afford to keep the car and had put money into it for resale, were quite anxious to get it back from California intact and requested the respondent to be very careful in selecting the driver which they requested be a mature person.

Sometime after the car was picked up, she called the Los Angeles office of the respondent twice to inquire about the reason for the delay. She was told that the tires were bad and she advised the respondent to take care of the tires, and arrange through Sears Roebuck to have brand new tires mounted and balanced, which cost her $97.50. This was done and the car was ready to go on December 4.

Mrs. Ferreira heard nothing more until December 23 when she received a telephone call from the driver who told her that he had been in an accident with the car and had hit a deer near Melbourne, Fla., at 11:30 p.m. the previous night. He told her that he was not injured but there was considerable damage to the car. She asked whether the accident had been reported to the police and he answered in the negative expressing his opinion that it was not necessary to report an accident with a deer. He told her that he would be arriving the following day. She then called the Miami office of the respondent and reported to it the substance of what the driver had told her. That office told her not to pay the driver the $50 due on delivery and not to sign the bill of lading.

The following afternoon the driver showed up with the car and 4 passengers. She followed instructions from the Miami office and did not pay the $50 driver's fee, nor did she sign the bill of lading. On November 26 she called the Miami office and was told to take the car to any garage to get an estimate. She took the car to a garage and got an estimate of $263.31 and sent the original of the estimate to the Miami office of the respondent. That office then advised her that since the matter involved insurance in an accident it would have to be handled by the office of the respondent in New York City. She then spoke with Bob Maxwell in New York on the telephone and explained the situation to him. Maxwell told her that nothing else should be done since the claim was in. She gave him the name of the garage at which the car was situated and Maxwell told her that it was alright to leave the car there and that the respondent would take care of it. There followed numerous telephone calls and letters between Mrs. Ferreira and the respondent, pictures were taken of the car in its then condition and sent to the respondent and on March 19, 1971 over the signature of Bob Maxwell the respondent advised her that her claim had been denied on the ground that retention of the $50 constituted full settlement and satisfied all claims. Other correspondence proved fruitless and eventually the car was repaired at the Ferreira's expense for $289 and subsequently sold. Since the Ferreiras had no insurance company, both the repairs and the new tires were out-of-pocket expenses to them. In its testimony the respondent insisted that the $50 offset was a fair settlement to the claim of Mrs. Ferreira.

Myrtis Fauntleroy, now a resident of Miami, Fla., made arrangements with the respondent for transport of her car from Long Island, N. Y., to Miami, Fla., in December 1970. In preparation for the trip, she took the car to Sears Roebuck, had 3 new tires put on and the motor tuned up on December 7, 1970. The car was picked up on December 16 and about one-half hour later the driver reappeared saying the car had experienced mechanical difficulties and that the gas tank was empty. Mrs. Fauntleroy immediately got into the car and drove it to a gas station and had the tank filled. Mrs. Fauntleroy and the driver then road-tested the car to satisfaction of the latter. Shortly thereafter, she received a message from the respondent that the car was experiencing mechanical difficulty. For two days her son was in telephonic communication with the respondent trying to get information as to what was wrong with the car without success. She left New York on December 29 and flew to Florida, at which time her son advised her that the respondent had informed him that the car would be delivered without any further delay or repairs. When she arrived in Florida, she called the local office of the respondent and was informed that the car was in New York being held up for repairs and that she should deal directly with the New York office. On January 4 she telephoned her attorney in New York and asked him to check with the respondent as to the car's location and condition. He subsequently informed her that the car was being held in the garage and that he had been informed there was nothing that she could do except authorize the repairs, which she did. The repair bill and a storage bill amounted to $80 which she paid on February 4.

When the car had not arrived on February 10, she called the New York office of the respondent and was advised that the car was picked up on February 9 and would be delivered by February 14.

When the car had not arrived by February 17, she called the district supervisor of the Commission in Miami concerning the matter. That official called the office of the respondent in New York and was advised that it had no idea where the car was. The district supervisor advised them to put out a report to the police that the car had been stolen or missing. On February 25 a friend in Miami, who was the original consignee of the shipment, received a call from Bob Maxwell in New York asking whether the car had been delivered and when told that it had not, he said that he believed he knew where it was but was not sure. Later, the witness received a letter from Maxwell dated February 25 which requested her to give him the stolen report number on file with the police department. There followed some confusion as to whether or not the car had been reported stolen to the New York police. On February 26 the witness received a phone call from a woman who identified herself as Mrs. Novak, who told her that she and her husband were at the travel lodge in Ft. Lauderdale and were on their way to deliver the car.

The car was delivered at 4:30 p.m. Mrs. Fauntleroy stated that the car was filthy, the back seat was filled with the Novaks' personal possessions, and there were 3 large pillowcases filled with dirty laundry in the trunk. They were accompanied by a small child and requested that Mrs. Fauntleroy make her car available for the night so that they could sleep in it. After she refused to let them take her car, the Novaks left on foot, refusing to remove their personal possessions from the car. On February 27, Mrs. Fauntleroy determined that the Novaks had returned to the travel lodge in Ft. Lauderdale and, further, that they had been registered at the travel lodge from February 20 until they checked out on February 26 and then returned and registered for the night of February 26. From this, the witness concluded that her car had been within one hour's driving time of its destination for six days prior to delivery. When she checked the mileage on her car, she discovered that it had been driven a total of 2,443 miles since it was picked up on December 16 by the respondent, in excess of 1,000 miles more than the mileage between New York and Miami, Fla.

On March 1, she contacted the Miami office of the respondent and requested that they send someone to remove the personal items of the Novaks and clean up the car. The request was refused and that office disclaimed any responsibility and advised her to throw the possessions out on the street. Mrs. Fauntleroy was required to box the possessions and store them in a friend's garage so that she could clean up her car. In addition to being filthy, the car had a dent on the left rear fender and two long scratches almost the length of the lower right side when it was delivered. She described the Novaks' personal belongings in the car as including, among other things, a large amount of dirty laundry, cooking utensils, order blanks for selling magazine subscriptions, child's toys, and numerous articles of clothing.

The Novaks returned on March 2, requesting their possessions and his driver's fee of $50 and an additional $4 for an air filter. Acting on advice of counsel, the witness refused to pay him and refused to sign the bill of lading. On March 3, she discovered that the battery, which was the wrong size for the car, was dead and was required to buy a new battery as well as replace a battery cable and a starter cable to put the car back in running condition.

She received a letter dated November 5, 1971, from Ralph Zola requesting her current position on the matter so that the respondent would be in a position to review the claim. Another letter from Mr. Zola dated December 28, 1971, acknowledged receipt of a copy of a letter to the American Fidelity Insurance Company (its insurer) and reiterated that the respondent would like to proceed with her claim and requested that she forward them certain papers, including the repair bill to put her car in condition for the trip, the bill for the battery in her car in November 1970, the repair and estimate of the damage to the vehicle and any rental bills for substitute transportation during the time she was without a car. She forwarded all of the requested papers that she still had in her possession on December 15. Her copy of the letter to the insurer of the respondent made claim for repairs and storage paid to the New York garage, the telephone bills necessary to get information regarding the whereabouts of her car, reimbursement for a new battery and cables, compensation for the 1,000 excess miles at the rate of 10¢ a mile, and body shop estimates to repair the damage to her car in transit, all of which totalled $500. She had not heard further from respondent and at the time of the hearing had received nothing from her claim.

The respondent resisted payment of the claim for the reason that it was not filed until December 15, 1971, approximately 11 months after delivery of the car, and its bill of lading requires that claims must be filed not more than 9 months after delivery of the vehicle.

Mrs. Emily Raze arranged with the respondent to transport her car from Bronxville, N. Y., to Miami, Fla. On January 27 the agent of the respondent came to pick up the car and the agent and Mrs. Raze checked the car.

APPENDIX [illegible]

The checklist they completed indicated there was a dent in one of the fenders and in one of the doors. The witness told the agent that the car had been tuned up and had a full tank of gas. The car had just had a major tune-up before the trip and had 4 new tires installed. When the car had not been delivered by January 2, she contacted her sister in New York and requested her to call the respondent. The sister was told that the car had not left because the respondent did not have a driver for it. She then contacted the Miami office of the respondent and was advised that the car would be leaving on February 3 and she would receive the car by February 6. On that date, she received a call from the driver stating that he had abandoned the car on the Florida State highway outside of Ft. Pierce due to the fact that it had overheated and would not run anymore. When she inquired why he had left the car and not gone to the State Police for help or have the car towed to a service station so it could be fixed, he replied that he had a wife and four-month old baby with him which were far more important to him than her car. She immediately called the Miami office of the respondant and was told that it knew nothing about the matter but would call her back. Despite several subsequent calls, the Miami office never did call her back. She enlisted the aid of her son, who called the State Police, and within a very short period the car was located. She then called the West Palm Beach office of the respondent, which had the car picked up on a Sunday and towed to a service station. The service station was not equipped to handle the repairs required and the above office had the car towed to a garage. When she spoke with the garage, she was told that the car had been run hot, that after the water hose or radiator malfunctioned, instead of stopping when the red indicator light went on, the driver continued to drive. She was told that 4 pistons were broken and there was the possibility of a cracked block. The mechanic told her that in order for the engine to be in that condition, the car would have had to have been operated for some time with the motor hot. He advised her strongly to have a new motor put into the car, which she authorized after telephone conversations between her sister in New York and the office of the respondent there. The sister was advised by Bob Maxwell to have the car repaired and subrogate with her insurance company and, in any event, not to worry about it since one way or another it would be taken care of. The cost for replacing the engine was $375 plus the two towing charges of $80.

Mrs. Raze went to Palm Beach to pick up the car and pay for the repairs. She states she was appalled when she saw the condition of the car. All of the hubcaps were missing, there were baby clothes, dirty diapers, rancid milk bottles, candy wrappers, the interior of the car was generally filthy, and the items which she had packed into the trunk of the car were missing. Mrs. Raze took everything out of the car and gave it to the garage. She reported the whole incident to her insurance company and was subsequently reimbursed for the hubcaps but nothing else. At the time the car was picked up in New York she opened the trunk in the presence of the driver and showed him the personal possessions therein. She asked whether or not it would be necessary to give him a list of these items and he told her no, that she had nothing to worry about and that the car would be in very reliable hands.

Mrs. Raze described the items in the trunk that were missing on its arrival at West Palm Beach as a decorator chandelier, an original etching, two bathing suits, 3 dresses, 5 pairs of sports shoes, a portable radio, and a water pitcher with tray.

On February 19, 1970, she wrote to the respondent in New York and claimed reimbursement for the articles in the trunk, the repairs to her car, the expenses involved in recovering her car at West Palm Beach, and time lost in employment, totalling $1,751.22. She turned the matter over to her attorney on April 16, 1970, but has not received any reimbursement from the respondent.

On May 22, 1970, Ralph Zola wrote to the attorney for Mrs. Raze and stated that after having thoroughly reviewed the case with his client, the respondent, he concluded that the car had encountered a mechanical breakdown on the Florida Turnpike, and, since the bill of lading provided that mechanical difficulties incurred during its shipment and the consequences thereof were the sole responsibility of the owner of the car and that his client must decline the claim.

The daughter of Mrs. Jocelyn Brown, a resident of Kingsville, Tex., arranged with the respondent to transport her car, which was being sold to Mrs. Brown, from Kingsville, Tex., to Jacksonville in February or March 1970. It was delivered to a parking lot a half block from the office of Mrs. Brown, from which point she received a call from the driver of the car who told her to get right down to the parking lot since he did not want to pay parking fees. When she arrived, they handed her the bill of lading telling her to "sign it, the car is here", and then took off.

Mrs. Brown discovered that the indicator showed no gas in the car and drove it to the nearest gas station, noticing that the car was missing, skipping, and smoking. The gas station had to put two quarts of oil in it before it could be measured. She immediately took it to a Ford dealer and the mechanic told her that the car apparently had been gunned at high speed, causing it to lose oil at a rapid rate. After going over the engine, the mechanic recommended that it be replaced which the witness authorized for a total cost of approximately $200.

She called her daughter and told her the condition of the car when it arrived and suggested that the daughter write to the respondent since she told her mother that the young man who drove the car when it left that there were two quarts of oil in the back of the car and to check it and put the oil in so it would not be driven hot. When the car arrived in Jacksonville, the two quarts of oil were intact in the trunk. The daughter wrote to the respondent describing the condition of the car upon its arrival. Among other things, the letter points out that on its arrival the car was totally devoid of oil, that it was necessary to put in two quarts of oil before it was possible to measure the oil, that the car had never used an excessive amount of oil, that the day before it was picked up by the respondent the car was completely checked for any mechanical difficulties, that there were two quarts of oil in the trunk which the driver was aware of that were unopened on delivery, that after several inquiries she had been advised that driving an automobile at an excessive rate of speed will throw oil from the car, and that it would be necessary for the car to be completely examined for further damage since it was obvious that untold damage could have occurred if the car was driven for any distance in the condition that existed on arrival. The response of the respondent was that since Mrs. Brown had signed a release in the parking lot its responsibility had terminated, that when the car was accepted it should have been checked, taken to an automobile dealer and had checked before acceptance. In correspondence initiated by the respondent shortly before the hearing at which Mrs. Brown testified, the respondent indicated that the first time it had heard that the engine had to be replaced was in reply to her letter to it of January 5, 1972. In that telephone conversation, one of the Zolas neither indicated that he intended to settle the claim, nor did he offer any amount in settlement.

In addition to the "clean receipt" disclaimer of responsibility, the respondent states that no formal claim had ever been filed seeking monetary damages.

Ray Dean Rust arranged with the respondent for transport of his automobile from Austin, Tex., to Whippany, N. J. The car was picked up approximately May 8 after a several day delay because of lack of a driver. On May 11, 1970, the wife of Rust received a telephone call from the office of the respondent in San Antonio and she was advised that there had been a minor accident with the car in North Carolina. However, the agent did not have any details of the accident. Mrs. Rust inquired about a delivery date and was told that since it was a minor accident the driver would get it fixed and drive it to Whippany within a few days.

When the car did not arrive after several days, Rust called the agent in San Antonio who told him that the car apparently was damaged worse than she had at first thought and that it was in a garage in Morganton, N. C.

Rust called the garage in Morganton and was advised that the driver had been drinking while driving, collided with another car on the highway striking it from the rear as a result of which the other car was overturned and that the driver ran away from the scene of the accident and had been captured by the State Highway Patrol. The garage gave Rust the name and telephone number of the arresting officer to contact for further details and was advised by the officer that the driver had been drinking, that it was hit and run, that his car was impounded and that the driver was in jail. Rust also received a letter from the insurance company of the struck car indicating that the driver had been charged with driving while intoxicated and hit and run involving personal injury.

Rust then called the New York office of the respondent and spoke to Bob Maxwell who told him to send everything he had received to the New York office and the originals of some of the foregoing correspondence were sent to Maxwell. He spoke to Maxwell again and told him that he needed a car since several weeks had passed and Maxwell told him to get in touch with his insurance company. The insurance company arranged to have the car temporarily repaired to get it in driving condition for an onward trip to New Jersey. The temporary repairs cost $200. The respondent arranged to have another agency, ACA Transporting Company, transport the car to New Jersey after the temporary repairs had been made. The car arrived 2½ months after initial pickup in Austin. Repairs to the car after arrival amounted to $1,200 and were handled by the insurance company of Mr. Rust. Rust claimed $103.14 from the respondent for the deductible amount and a broken flower pot and received $100 in full settlement.

In January 1971 he was served with two summonses and copies of two complaints filed in a North Carolina court in which he, together with the driver, the respondent, and the company by the name of Driveaway Company, Inc., were named as defendants. The plaintiffs were the husband and wife who were injured in the North Carolina accident and were asserting damages totalling $510,000.

The respondent states it never indicated that they were not responsible for the entire amount of the damage claim. In addition, it advised its insurance carrier a number of times regarding the various third-party claims which had been received. Its insurance company is defending the respondent in the third-party litigation in North Carolina.

The North Carolina authorities brought criminal charges against the driver and he was convicted in the courts there of the felony of hit and run driving resulting in personal injury, the misdemeanor charge of driving under the influence, and sentenced to 9 months in jail for the first offense and 6 months for the second.

By letter dated February 22, 1972, the attorney representing Rust in North Carolina advised him that the Federal Bureau of Investigation had contacted him regarding the whereabouts of the driver who was a fugitive from justice and had at that time discovered that the driver had an extensive record for convictions for auto theft, interstate transportation of stolen motor vehicles, mail fraud, armed robbery, kidnapping, and escape from prison on several occasions.

Stephen P. Tomany, District Supervisor at the New York office of the Commission, testified that he had examined dockets of 21 legal actions, which he listed by docket numbers, commenced by the respondent in the Supreme Court, Manhattan County, N. Y., in 1971. In each of these actions, the respondent was seeking an order by the courts staying a lawsuit brought by someone in a jurisdiction outside New York, N. Y., and enforcing the arbitration provisions in the bill of lading of the respondent requiring claims to be arbitrated in New York, N. Y. Most of the petitions were granted, some were withdrawn, and some were granted on default.

Tomany identified a letter from the Section of Tariffs of the Commission written to Irving Zola on June 15, 1971, rejected for filing a bill of lading of the respondent on the grounds that it provides for a liability period of less than 9 months during which a shipper may file a claim for loss, damage, or injury, attempt to place liability on the person not a party to the contract of transportation, and provide for compulsory arbitration of claims in New York City subject to the laws of New York State. The letter pointed out that these and other provisions in the bill of lading have the effect of limiting the conditions bearing upon the respondent's statutory liability for the full, actual loss, damage, or injury to property transported by it which had been imposed absolutely by Congress in Section 20(11) of the Act.

The certificate of the respondent contains a restriction against the transportation of any traffic "moving to automobile dealers". A witness for the Bureau of Enforcement submitted an analysis of 15 shipments, the consignee in each of which was an automobile dealer. In behalf of the respondent, and in the petition for interpretation of its certificate, the respondent asserts that the restriction is impossible of consistent interpretation, is vague, is indefinite and does not under possible interpretation thereof, permit petitioner to offer a complete service to its shippers.

No. MC-C-7287

APPENDIX B

August 10, 1970 | August 17, 1970

BILL OF LADING AGREEMENT

PICK UP CAR FROM:	CONSIGNEE:
Mr. Lesley H. Browder Jr 824 San Francisco Court Stanford, California (415) 327-2450	Mrs. Nicholas Schroder 7 Essex Court Port Washington, New York (516) 767-4571

REGISTERED CAR OWNER (SHIPPER) Lesley H. Browder Jr. REGISTERED ADDRESS 10 Birch Road CITY & STATE Mahwah, N. J.

CAR MAKE Volkswagen TYPE Sedan MODEL DOORS 2 Doors LICENSE # [illegible]-375 N.J.

AUTOMATIC TRANS No POWER BRAKES No POWER STEERING No SERIAL # 01274

CONDITION REPORT — G GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER	D-S	LF WINDOW	G	TIRE JACK	G	ROOF	G	LUGGAGE IN TRUNK ONLY
FRONT BUMPER	G	LF DOOR	G	SPARE TIRE-WHEEL	G	HUB CAPS	G	2 Spares
FRONT GRILLE	G	L BODY SILL	G	R LIGHTS	G	RADIO	G	
FRONT LIGHTS	G	LR WINDOW	G	RR PANEL	G	HEATER	G	
HOOD	G	LR DOOR	—	RR WINDOW	G	UPHOLSTERY	G	
WINDSHIELD	G	LR PANEL	G	RR DOOR	—	KEYS	G	
LF FENDER	G	TRUNK LID	G	R BODY SILL	S	RR FENDER	G	
RF VENT WINDOW	G	R BUMPER	G	RF WINDOW	G	LR FENDER	D	
LF VENT WINDOW	G	R WINDOW	G	RF DOOR	S			

Shipper guarantees the operating and mechanical condition of the herein mentioned vehicle during transport, and assumes all responsibilities for damage and all liabilities arising therefrom. Regardless of cause, carrier shall not be liable for any damages or consequences from or for any delay in delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. Shipper agrees that driver is an independent contractor and that driver may make any necessary repairs to said vehicle of less than twenty dollars without shipper's consent and repairs in excess of twenty dollars with shipper's prior consent. Shipper shall pay for all said repairs. In the event of damage or loss to said vehicle, shipper shall retain all or part of driver's fee required to pay for same; or, if said damage or loss shall exceed driver's fee, shipper shall forward driver's fee, constituting final freight bill payment due, to carrier within seven days after said damage or loss occurs. Payment to driver by shipper or shipper's agent shall constitute conclusive evidence of satisfactory delivery of vehicle. Retention of driver's fee, at shipper's option, beyond said seven day period shall constitute conclusive evidence of full settlement and satisfaction of any claims against carrier by shipper and shipper's assigns. This Bill of Lading and any shipment hereunder shall not operate as a waiver or avoidance of any contract of indemnity which shipper effected prior hereto or the obligations thereunder which shall devolve primarily upon the indemnitor, and said contract of indemnity shall be and remain in full force and effect. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. All terms and conditions of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be invalid and void unless personally signed by and forwarded by the shipper to carrier. The shipper shall commence any legal action necessary to mitigate or recover damages from any third party responsible, or any source liable, therefor. Any recovery by, or satisfaction of said damages to, shipper from any source liable or responsible to shipper therefor, shall, to the extent thereof, operate and constitute a discharge and release of said claims against carrier by shipper and shipper's assigns. Driver alone shall be responsible for all violations of law during the time that the vehicle is in his possession. Driver and shipper consent to the personal jurisdiction of the courts of the State of New York and to service of process upon driver or shipper for the commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. This Bill of Lading agreement shall be deemed executed by the carrier at its principal office in New York City. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the performance or breach thereof, is non-assignable and shall be settled by arbitration in the City, County, and State of New York, provided however, that upon such arbitration the arbitrator(s) shall be bound by, and may not vary or modify, the provisions of this Bill of Lading agreement and shall, at the request of any party thereto, apply the rules and laws of evidence that would otherwise apply in a court of proper jurisdiction.

PICKED UP IN THE ABOVE CONDITION EXCEPT AS NOTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT X Lesley H. Browder Jr.	CONSIGNEE (SHIPPER'S AGENT) X
DRIVER William C. Hurd	DRIVER RECEIVED FULL PAYMENT X
DATE August 10, 1970	DATE X

TOTAL PAYMENT DUE AT DESTINATION $ 50.00 ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION

NAME WILLIAM C. HURD
ADDRESS 105 Century Drive
CITY Syracuse, New York
PHONE (315) [illegible]-4567

No. MC-C-7287

APPENDIX C

AAACON AUTO TRANSPORT INC.

NEW YORK • LO 3-3222 147 West 42nd St.
CHICAGO • HA 7-0086 202 South State St.
DETROIT • 963-2111 1749 Griswold
HOUSTON • CA 7-3166 517 La Branch St.
ST. LOUIS • CE 1-7033 511 Locust St.
PHOENIX • 264-0201 222 West Osborn Rd.
BOSTON • KE 6-0120 750 Boylston St.
CLEVELAND • 781-6263 1148 Euclid Ave.
MINNEAPOLIS • 336-0666 727 Hennepin Ave.
PHILADELPHIA • LO 4-4326 1612 Market St.

SAN FRANCISCO
1005 MARKET ST
431-0664

ICC # MC 125803

LOS ANGELES • MA 6-6884 707 S. Broadway
ATLANTA • 523-7644 175 Peachtree N.E.
SAN DIEGO • 234-6311 235 Broadway
SAN FRANCISCO • 431-0664 1095 Market St.
NEW ORLEANS • 522-0357 921 Canal St.
DALLAS • RI 2-4371 912 Commerce St.
WASHINGTON, D.C. • 278-8336 1025 Vermont
SEATTLE • MU 2-2277 1904 3rd Ave.
MIAMI • 821-4700 10 N.E. 3rd Ave.
KANSAS CITY • HA 1-1300 1005 Grand Ave.

BONDED and INSURED INTERSTATE AUTOMOBILE TRANSPORTERS • LICENSED BY THE INTERSTATE COMMERCE COMMISSION-NUMBER MC 125806

July 17, 1970

Mr. Leslie Browder
824 San Francisco Court
Stanford, California 94305

Re Transporting Volkswagon/66
To Long Island, New York
At the Complete Price of $160.00
Payable $110.[illegible] with your order and the
Balance of $ 50.[illegible] at destination

Dear Mr. Browder:

Your inquiry is sincerely appreciated. AAACON is the only nationwide auto carrier licensed by the U. S. Government providing complete delivery service for your automobile to or from every point in the United States. It operates the most modern facilities in the transportation industry. The rate quoted above, YOUR COMPLETE AND ONLY COST is based upon specific tariffs filed with the U. S. Government. YOU DO NOT PAY EXTRA for gas, oil, tolls or driver's expense, and the dispatch and arrival of your car is fully guaranteed, not by some second or third party, but by us, AAACON AUTO TRANSPORT.

We fully insure your car for liability in the amount of THREE MILLION DOLLARS, as well as full coverage for all collision damage, including the deductible amount. Our drivers are bonded for the sum of $7,500. All this extra protection is in addition to your own insurance and gives you DOUBLE PROTECTION at no additional cost.

Thousands of satisfied customers and our many years of experience attest to our record of SERVICE TO CAR OWNERS WITH CARE AND SAFETY. We are not an agent of some remote outside company, nor are we a group of two or more loosely connected offices organized under a trade name to look like a single company. When AAACON moves your car, you enjoy the security of knowing that your vehicle is in the hands of a national network, - one corporation fully charged with the responsibility of your automobile.

Keep in mind that AAACON is the ONLY company licensed by the U. S. Government to transport automobiles to or from ALL POINTS in the U. S., including Alaska, and enjoys industry leadership because "AAACON HAS THE LONGEST RECORD OF PROVEN SERVICE TO THE AUTOMOTIVE WORLD."

Simply fill in and mail the enclosed pink order form, including the date and place at which your car will be available; or just telephone us. Place your order now so that we have ample time to schedule a pick up and delivery date for your car.

Thank you very much.

Yours very truly,

AAACON AUTO TRANSPORT, INC.

By Mgr.

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EXCEPTION NO. 17

THE SLATTERY CASE

The Slattery case involved a shipment from California to Ohio. The car was delayed in Lawrence, Kansas, misprinted in transcript as Warrens, Kansas. (R. p. 1770) due to illness of the driver (R. p. 70). AAACON investigated and both located and retransported the vehicle to destination. (R.P. 72). Witness Slattery claimed that AAACON damaged the car in amount of $1783.11 which he collected from his own insurance company, which became subrogated to the claim. (R.P. 73).

The Judge erred in failing to consider or even mention once the fact that AAACON documented that Slattery falsely testified on the witness stand:

> That he had not received a report from AAACON, which he had in fact received, filled out and turned over to his insurance company, which in turn forwarded it to AAACON;
>
> That the alleged damage claimed was for prior damage on the vehicle;
>
> That he sought to report the vehicle stolen when in fact he was notified of the location of the vehicle by AAACON;
>
> That various parts of the car were claimed by Slattery to have been replaced upon being repaired, when in fact they were merely straightened;
>
> That he sought a claim for normal tire wear and tear which had been verified as not a proper claim by his own insurance company;
>
> That subsequent litigation in this matter absolved AAACON of any liability.

Not one word of the foregoing facts were considered or even mentioned once by the Judge, who also failed to consider all other evidence supporting AAACON's position.

The Judge erred in failing to consider that:

The bill of lading on which this car was shipped showed prior damage at the very same area as the damage subsequently claimed. (R.P. 1775).

AAACON had a proper Released Rates Tariff filed with the Commission limiting its liability to $50.00 for trunk contents. Thus the statement of the Administrative Law Judge that the claim for trunk contents of over $200.00 was "not honored" is erroneous and prejudicial.

AAACON advised Slattery of the location of his vehicle and the reason for the driver's delay - sickness - on September 11, 1970.

Nevertheless, thereafter Slattery asked AAACON to report the car stolen to his insurance company. However, both AAACON & Slattery knew the car was not stolen and AAACON refused to report the car as stolen. Instead AAACON informed Slattery's insurance company of the location of the car in Lawrence, Kansas. (R.P. 1771).

This did not stop Mr. Slattery, however, who filed a theft claim with his insurance company himself, despite the fact that AAACON had previously informed him of the car's location. (R.P. 1771) (Exhibit 246)

Mr. Slattery's insurance company notified AAACON that Mr. Slattery "has filed a claim under his comprehensive coverage for total theft - on October 7, 1970" almost a month after AAACON had notified Mr. Slattery of the location of the vehicle. (Exhibit 246)

To report a car as stolen when in fact Mr. Slattery knew of its whereabouts demonstrates his unlawful attempt "to sell" his vehicle to his insurance company and ultimately to AAACON - although such actions on the part of shippers have been condemned by the Commission, 340 ICC 515 (1972).

When AAACON informed Slattery's insurance company of the location of the car and the unlawfulness of the stolen car report, Slattery started a campaign of letter writing and this included a communication with a Cleveland, Ohio newspaper (R.P. 1772). As a result, AAACON received a communication from that newspaper and responded immediately and explained the details of the situation to the newspaper's satisfaction. (R.P. 1772).

Slattery sent AAACON a claim which he dated November 17, 1970, but which was not received by AAACON until December 8, 1970. (R.P. 1772-1773). AAACON on that same day sent a request to Slattery for information concerning the claim. Slattery falsely denied under oath ever receiving the request from AAACON, in his attempt to establish by his testimony that AAACON was not responding to his correspondence. (R.P. 1772-1773). However, as the record indicates, AAACON received the very document requesting information filled out by Slattery himself in the interim, some seven months later.

Exhibit 254 is the information request letter which Slattery wrongfully stated under oath he had never received from AAACON.

After Slattery filed a claim with his insurance company and was paid for damages, AAACON contacted the insurance company in an attempt to settle any loss. (R.P. 1775).

AAACON wrote the insurance company a number of times and did not get a response from the insurance company. Thus Exhibit 247, not considered by the Administrative Law Judge, indicates that AAACON wrote to Slattery's insurance company on April 6, 1971 and again on April 15, 1971, inter alia.

AAACON also advised Slattery's insurance company of the notation of prior damage to the area in question on its bill of lading when the car was shipped, of which the insurance company was apparently unaware. (R.P. 1776).

Exhibits 249 and 248, not considered by the Administrative Law Judge, letters of October 4, 1971 and October 5, 1971 were letters in which AAACON notified Slattery's insurance company of the prior damage to the vehicle.

Exhibit 250 not considered by the Judge is a letter of January 6, 1972 from AAACON to Slattery's insurance company indicating that the insurance company had again failed to respond to AAACON's earlier letters.

Since AAACON still was not satisfied that any damage to the car was caused while AAACON had the vehicle (R.P. 1777), it asked for photographs from the insurance company showing the alleged damage to the automobile. (R.P. 1777, 1779).

Exhibit 251 is a letter dated February 17, 1972 from AAACON to Slattery's insurance company asking for corroborative photographs and materials on the vehicle claim.

The claim asserted by Slattery was $852. The pictures furnished showed that the damage, even if caused by AAACON would not have exceeded $150 to $220 to repair. The alleged damage was in the exact same areas as those where the bill of lading noted the prior damage to the car when tendered to the carrier at origin - the front end of the car, thus indicating that there may have been no liability on AAACON's part because the damage was on the car when AAACON received it from Slattery. (R.P. 1782, 1783).

There was no record of any police report of any accident, nor did the driver report one to AAACON. No third party ever made a claim for damage in this case. Since the front end of the Slattery vehicle was allegedly damaged, this alleged front end accident would have been grounds for a prima facie case for liability to any third party had an accident in fact occurred.

The witness for AAACON indicated that the driver's references had been checked. The driver was satisfactory and his references were proper. (R.P. 1785).

The record indicates that AAACON responded to all letters in connection with the claim as filed by Slattery or his insurance company. (R.P. 1785, 1786). Clearly, everything which required of the carrier was done by AAACON in attempting to resolve his claim.

Applicant believed that the claim was unsubstantiated, and therefore, not proper. (R.P. 1782, 1783).

In an effort to resolve this matter, and to determine whether or not the allegedly damaged parts were removed from the automobile and replaced with new parts, as alleged by Slattery and his insurance company, AAACON requested the insuranc company to make the automobile available to its representative for physical inspection to determine if in fact the parts which were allegedly replaced were in fact actually replaced. (R.P. 1783, 1784).

AAACON requested, for over one and one-half years, proof of loss and substantiation of the claim from Slattery's insurance carrier but failed to obtain same from the insurer. (Exhibits 247-251).

The reluctance of Slattery's insurance company was explained in Exhibit 252 - a claim report from Slattery's insurance carrier finally sent to AAACON - indicating that the area repaired was the same area that had prior damage.

Exhibit 252 also documents the fact that Slattery made a false claim to AAACON for front tire wear due to misalignment, not accident, at the suggestion of the insurance company's adjustor, Bob Jasek. Exhibit 252 also contained photographs showing the very minor damage to the vehicle which may well have been solely the prior damage.

When the claim report of Slattery's insurance carrier was finally submitted, the suspicions of AAACON were found to be justified because rather than repairing the alleged damage parts, as had actually been done it had been previously contended, and the amount of the claim based upon the false statement that they had been replaced on a wholesale basis.

Many of those areas of the vehicle which were claimed to have been replaced were shown in photographs not to have been damaged at all, for example the rear bumper - when the alleged damage was to the left front. (R.P. 1877, 1878, Exhibit 252).

Estate of Ed Stein Chevrolet).

AAACON attempted without suceess to secure an opportunity for its own expert to view the alleged "new parts" of the vehicl which Slattery claimed to have been replaced because of damages. Thus, Exhibit 253, not considered by the Administrative Law Judge, is a letter to Slattery's insurance company asking for an opportunity to have a professional adjustor review the "alleged replacement" of damaged parts.

The Slattery case is one in which AAACON has sought leave to submit additional evidence in the form of affidavits from AAACON's expert who was finally permitted to inspect the vehicle - only after close of the hearings. The expert testimony under oath in the affidavit proves that the vehicle parts were not replaced - contrary to the false testimony of Mr. Slattery and the document he presented herein.

Additional new evidence which AAACON has sought an opportunity to adduce, but has not so far been permitted, demonstrates that Slattery and his insurance company finally dropped their spurious claims after they had commenced litigation therein in Ohio, when AAACON supplied their attorneys with its evidence of the misrepresentation and fraud practiced by Slattery and his insurance company in this matter, which supported AAACON's charges and claims that Slattery and his insurance company had sought to defraud AAACON and in violation of 49 US Code Sec. 10 (3). The dismissal of the case against AAACON is res judicata. Slattery and his insurer also filed complete releases of AAACON in that action in return for which AAACON released Slattery and his insurer of liability for fraud in the Ohio Courts.

In light of the foregoing, the Judge erred in his conclusion that

> "However, all of the evidence as to fraud is in the form of self-serving declinations (sic) by the witness for the respondents."

The uncontested documentary evidence produced by AAACON in this proceeding demonstrate gross misrepresentations on the part of Slattery and his insurance company. The claim of Slattery that parts of the vehicle needed to be replaced and were replaced after delivery and the claim of Slattery that the tires were damaged by an accident, when in fact no such accident occurred, is a creation of Slattery and his insurance carrier to obtain monies from AAACON under false pretenses.

The statement of the adjustor for Slattery's insurance company suggesting that a false claim for damaged tires (which were admittedly worn solely due to misalignment) be filed with AAACON; the allegation that the damage was caused by AAACON when the bill of lading shows the same damage was on the car when tendered to AAACON; the false statement of Slattery that he never received Exhibit 254 which was turned over by Slattery to his own insurance company after Slattery had in fact received it and filled it out himself - are hardly "self-serving declarations" by the witness for the respondent. The Judge's statement in this regard is a further indication of prejudgment on his part and his total disregard of the evidence adduced in these proceedings.

While Slattery filed claims with his own insurance company first for a non-existent car theft and then for a non-existent collision, AAACON at no time denied liability until all of the facts were in.

AAACON did not require Slattery to file any claim with his insurance company as a prerequisite to accepting Slattery's claim or accepting any possible liability.

Slattery had no personal knowledge of the condition of the vehicle when given to AAACON nor was he present, nor did he personally know that the car was in an accident and his testimony in these regards was improper hearsay (R.P. 78).

Slattery had no personal or expert knowledge of the cost of repairs and his testimony as to the amount of his claim was improper hearsay. Slattery had no personal knowledge of AAACON's communications with his insurer and his testimony in this regard is improper hearsay.

AAACON requests a new hearing to further examine Slattery in his false tsetimony and attempts to obtain money from AAACON by false representations.

No violation of AAACON's claims tariff or the Commission requirements in Ex Parte 263 are alleged or occurred with regard to this complaint.

AAACON communicated with the Interstate Commerce Commission personnel at their request concerning this claim soon after the time the accident arose. AAACON set forth its position in full to the Interstate Commerce Commission and received no Commission communication indicated that AAACON's position or its claims handling procedures were in any way unlawful, improper or unreasonable. It was not until AAACON saw the witness's name listed by the Bureau of Enforcement in these proceedings that AAACON was given any indication that any dissatisfaction existed in the minds of Commission personnel concerning the handling of this complaint.

The Administrative Law Judge erred in failing to find that AAACON was entitled under Federal law, its tariffs and the terms of the Uniform Straight Bill of Lading, to the benefit of the insurance on the vehicle. United States v. Auto Driveaway, 464, F2d 1380 (7th Cir., 1972).

AAACON had a reasonable basis for its position in this matter, which was sustained by separate attorneys for both Slattery and his insurance company with documentation of the misrepresentations included by Slattery and his insurance company herein, and the judgment of the Bureau of Enforcement or the Commission may not be substituted therefor.

arbitration provision are discussed below, in connection with the arbitration provision itself, none of which were ever considered or even mentioned once by the Judge although thoroughly briefed by AAACON. (R.P. 1636, 1637).

Thus, to summarize, on all of these issues the Second Circuit Court of Appeals held that the specific provision for arbitration in New York was proper and lawful and upheld the order of the Federal District Court which specifically stated the arbitration provision to be lawful, reasonable and not in conflict with AAACON's tariff or the Uniform Bill of Lading.

As further evidence that the Second Circuit Court of Appeals in AAACON Auto Transport, Inc. v. Levine, supra, considered and rejected the attenuated arguments that the Uniform Straight Bill of Lading, as incorporated as part of respondent's tariff, conflict with the arbitration provision, that the arbitration provision in AAACON's Bill of Lading was unconscionable or unreasonable, or that AAACON's tariff provisions themselves conflict with arbitration, it is noted that appellant Levine, on pages 7, 8, and 9 of his brief, raised all of those arguments which the Federal Court of Appeals rejected. They are reproduced herein verbatim to eliminate any doubt as to what issues were raised before and rejected by, the Federal Appeals Court in AAACON v. Levine:

> "Appellee AAACON has adopted the Uniform Bill of Lading as a part of its tariff which is also within purview of 49 U.S. Code Sec. 20(11). Therefore, appellee AAACON is bound by the terms of the Uniform Bill of Lading."

Court which specifically stated the arbitration provision to be lawful, reasonable and not in conflict with AAACON's tariff or the Uniform Straight Bill of Lading. These are the same spurious and erroneous arguments raised by the Judge in his decision.

Inasmuch as it is clear that AAACON's Bill of Lading provisions comply with the laws of Congress it is for Congress to make any changes therein concerning arbitration, service of process, or other provisions it has authorized by law.

It is thus clear that AAACON's Bill of Lading provisions comply with the laws of the Congress of the United States 9 U.S.C. 1 et seq. to the decisions of the Commission, Ex Parte 263, and the tariff of AAACON, Rule 21 and Claims Tariff Rule 20.

The reasoning of the Judge herein in implying that any term, including the arbitration provision, which is not contained in the Uniform Straight Bill of Lading may not be contained in the Bill of Lading of AAACON has been rejected by two of the most distinguished Courts of the land in unanimous decisions in cases where the issue had been raised upon appeal and vigorously contested. His judgment in this respect is contrary to the law of the United States as the Courts have stated it, and amounts to nothing more than an attempt to evade his statutory mandate and constitutional responsibility to uphold the law.

Additionally, as discussed below, the same conclusion on the same issues was upheld unanimously by the Third Circuit Court of Appeals in AAACON Auto Transport, Inc. v. Jacobson, _____ F2d

EXCEPTION NO. 43

FEDERAL AND STATE COURTS THROUGHOUT THE UNITED STATES HAVE UPHELD THE PROVISION FOR ARBITRATION IN AAACON's BILL OF LADING

Thus the Judge erred in failing to find that the record in these proceedings is replete with authoritive evidence that the provisions of the Bill of Lading used by AAACON are consistent with and do not vary the terms and conditions of the Uniform Bill of Lading. In fact, the Bill of Lading used by AAACON specifically incorporates by reference the provisions of the Uniform Straight Bill of Lading. There is not one scintilla of evidence of any conflict between AAACON's Bill of Lading which is Exhibit 162 and the Uniform Straight Bill of Lading.

Exhibit 232 was a certified eleven page memorandum decision of Federal Court Judge Charles L. Br[illegible]ant, Jr. setting forth the legal authorities which support the conclusion that AAACON's Bill of Lading provision for arbitration in New York is lawful and reasonable and "valid" and that the matter of shipper claims against a driveaway carrier "is peculiarly suitable for determination by arbitration". (page 11)

Exhibit 233 was a three page decision of Federal District Court Judge Inzer Wyatt specifically finding that arbitration does not interfere with litigation commenced by the shipper in another jurisdiction. This was confirmed by Exhibit 234.

Exhibit 235 was a decision of a Federal District Court in

California finding arbitration in New York as valid and lawful under AAACON's Bill of Lading provision.

Exhibit 236 and 237 and some of the Levinecase documents indicating the unanimous decision of the Second Circuit Court of Appeals upholding the lawfulness and validity of the provision for arbitration in New York of AAACON's Bill of Lading and holding that both the tariff provision and the Uniform Straight Bill of Lading do not conflict with and were not at variance with the arbitration provision.

Exhibit 238 is a list of approximately 50 other cases in which arbitration at a jurisdiction other than the one in which litigation was commenced had been upheld in Courts throughout the United States.

THE JUDGE ERREDIN FAILING TO CONSIDER ANY OF THE FOREGOING EXHIBITS OR EVEN MENTION THEM.

The Judge erred in not considering other Federal Court decisions from all over the United States upholding the lawfulness and validity of the arbitration provision in AAACON's Bill of Lading cited in AAACON's brief of July 14, 1972.

I. FEDERAL DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AAACON v. Boldt 71 Civ. 3710 (per Tyler, J.)Exhibit 368, ordering arbitration in New York where the claimants were residents of California who had commenced litigation in California. Among the issues raised in the Boldt case was the validity of the arbitration provision in light of 49 U.S. Code Sec. 20 (11); the question of ousting the jurisdiction of the California court and service of process by mail.

AAACON Auto Transport, Inc. v. Gevirtz 71 Civ. 3778 (per Pierce, J.) (Exhibit J-13 for judicial notice) ordering arbitration in New York; claimants had commenced action in Illinois; upholding service of process by mail. In the Gevirtz case, opposing counsel specifically raised the issue of unconscionbility and public policy. The Court sustained the validity of the provision for arbitration in AAACON's bill of lading.

AAACON v. Rhorer 71 Civ. 3604 (per Wyatt, J.) Exhibits 233, 234 Indiana resident ordered to arbitrate in New York. Indiana litigation had been commenced. Service of process by mail upheld.

AAACON v. Bloom 71 Civ. 2458 (per Gurfein, J.) (Exhibit J-16 for judicial notice) Maryland resident ordered to arbitrate in New York. Litigation commenced in Maryland. Service of process by mail upheld.

II. FEDERAL DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Frost Rental and Leasing System Inc. v. AAACON 71 Civ. 757 (per Flores, J) Exhibit 235, Federal District Court staying litigation which was pending before that court in California, pending arbitration in New York. Claimant was a California resident.

III. FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Atlantic and Pacific Leasing v. AAACON (per Schacke, J.) (Exhibit J-16 for judicial notice) Federal District Court of California staying litigation pending before that court until arbitration is had in New York; claimant a California resident commenced action in California.

IV. FEDERAL DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Bruno v. AAACON Auto Transport Inc. 71 Civ. 147 (per Leib, J.) (Exhibit J-17 for judicial

APPENDIX

notice). Litigation in Federal District Court in Florida stayed pending arbitration in New York, claimant a Florida resident commenced action in Florida.

V. FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Segelin v. AAACON Auto Transport, Inc. 71 Civ. 40 (per Lambros, J.) (Exhibit J-18 for judicial notice) staying litigation pending in Federal Court until arbitration is had in New York. Claimant was an Ohio resident. Court specifically ruled the arbitration provision valid.

Mayer v. AAACON Auto Transport, Inc. 72 Civ. 546 (per Thomas, J.) (Exhibit J-19 for judicial notice) staying litigation commenced in Ohio pending arbitration in New York; claimant was a California resident.

The Judge erred in failing to consider that in each of the foregoing cases a Federal District Court ordered arbitration in *New York City* where the claimants were non-residents and where litigation had been commenced *in a jurisdiction other* than New York. Similarly, State Courts through the United States have upheld and enforced the specific arbitration agreements contained in AAACON's Bill of Lading (R.P. 1656). Thus, it is clear that United States Federal District Courts and State Courts throughout the country have recognized and enforced the lawfulness, reasonableness, and validity of the Bill of Lading provision in question.

Lest there be any question concerning whether the Courts merely *automatically* grant enforcement of provisions for arbitration, annexed to AAACON's brief of July 14, 1972 *for judicial notice* aside from the case examples given in AAACON's brief of July 14, 1972. AAACON seeks an opportunity to adduce additional evidence of additional cases in arbitration.

AAACON hereby requests an opportunity to adduce new evidence showing that AAACON has arbitrated many cases, including among them, as further additional examples taken from AAACON's records:

	Date	Bill of Lading
Bruno	1970	S 4839
Proctor & Gamble	1970	A 1462
Gazewitz	1971	C 10705
Hartford Ins. Co.	1971	T 3073
Sacramento Auto Sales	1969	A 2687
Atlantic Mutual Ins. Co.	1971	B 3287
Unigard Ins. Co.	1971	A 0274
Greeno	1969	A 3723
Teafatiller	1972	E 5514
Gale	1972	G 7585
Roth	1973	J 15665
Levy	1970	C 7824
Gevirtz	1971	G 3709
Moll	1973	J 9939
Nelson	1973	K 1809
Cathcart	1971	F 9875
Tomlinson	1972	H 7648
Eifrig	1970	T 1802
Wolfe	1973	C 2639
Walker	1973	J 14270

When it is remembered that only approximately 25% of claims are not amicably settled and that claims occur in only 2.9% of AAACON's shipments, the foregoing demonstrates beyond peradventure AAACON's practice of actually arbitrating claims. The Judge's statement to the contrary is the result of a prejudicial construction of the record and flatly and palpably false.

The Judge erred in stating:

APPENDIX II B

> "However, the respondent did use arbitration procedures for other purposes. As noted above, Mr. Tomany testified as to 21 legal actions commenced by the respondent in the Supreme Court, Manhatan County, N.Y. in 1971, in each of which the respondent was seeking an order by the courts staying a lawsuit brought by a claimant in a jurisdiction outside the State of New York and enforcing the arbitration provisions in the bill of lading of the respondent requiring claims to be arbitrated in New York, N.Y."

Most vital to these proceedings is the fact that there was not one scintilla of evidence adduced, or even a charge or allegation made, by the Bureau of Enforcement that the cases cited by Mr. Tomany were not subsequently arbitrated. In fact, two of the cases presented by witnesses in the hearings have been arbitrated -- Wolfe and Levy.

Not only was Mr. Tomany's testimony gross inadmissible hearsay, he did not offer the name or certified copy of any one of those 21 alleged legal actions. Following the Judge's erroneous syllogistic logic applied to one portion of Mr. Zola's testimony -- that failure to name individuals means that arbitration never occurred -- Mr. Tomany's testimony should be disqualified on the ground that his failure to name the cases means that they did not exist. The fact is that alleged statements of cases uncorroborated by certified copies are rank inadmissible hearsay and do not constitute a scintilla of proper evidence to sustain the Judge's finding.

EXCEPTION NO. 75.

WHILE NEVER DENYING LIABILITY ON THE BASIS OF THE FACT THAT THE SHIPPER HAD HIS OWN INSURANCE, SUGGESTED TO SHIPPERS THAT THEY NOTIFY THEIR OWN INSURANCE COMPANIES SO AS TO PROTECT THE SHIPPERS WITH REGARD TO THE "NOTICE PROVISIONS" IN THEIR POLICIES SHOULD THESE BE NECESSARY.

The Judge erred in failing to consider that the Operating Manual of AAACON, as shown in Exhibit 179, established that this was the procedure used by AAACON. The reason for this practice was that if the loss was not one in connection with which the carrier was responsible, and proper notice was given, the owner would be covered by his own insurance. An example given was a loss which was occasioned by an act of God for which the carrier would not be liable but the owner's insurer would be liable if properly and promptly notified by the insured. (R.P. 1493).

The Judge failed to consider that with respect to bodily injury and property damage, the testimony established that in many states the owner of a vehicle is primarily responsible for damages caused by his vehicle when a car is driven with his permission. (R.P. 1503, 1505). This question of liability to a third party by the owner and by the carrier was investigated at length by AAACON. The legal implications of the various State laws was discussed by representatives of the carrier with representatives of the Commission regarding the theory of primary and secondary liability. (R.P. 1487, 1490).

The Judge erred in failing to consider Exhibit 177 discussed below, which is a letter written by a representative of the Interstate Commerce Commission setting forth his understanding of the governing State laws relating to the liability of automobile owners to third parties, when their vehicles are transported in driveaway service. Similarly the Judge did not consider Exhibit 178 which is a similar legal opinion received by applicant. This question of primary and secondary liability in connection with bodily injury and property damage actions by third parties against the owner and the carrier is based upon the laws of each State and not any Federal statute or jurisdiction by any agency of the Federal Government. (R.P. 1490).

The advice to the car owner given by AAACON personnel suggesting that the car owner notify its own insurer is vital with respect to third party liability involving bodily injury or property damage. Inasmuch as State laws impose certain responsibilities on owners of automobiles which are being operated with the owner's permission, it is imperative that the owner notify its own insurance company of an accident so that the owner may have the protection of its own insurance as well as that provided by AAACON as a carrier. (R.P. 1491-1493).

Exhibit 180 is an abstract of the California Motor Vehicle Code and the Omnibus Insurance Clause therein which sets forth the doctrine of primary liability for the car owner. (R.P. 1500). Exhibit 181 is a similar New York State statute. (R.P. 1502). It is thus clear that the various State laws are similar with respect to the imposition on the car owners of primary liability in bodily injury and property damage matters, regardless of the fact that it is operated by a driver supplied by a driveaway carrier. (R.P. 1501).

Clearly, the advice and information given by the employees of AAACON to the car owner is an important service and not an attempt to evade or avoid responsibility. It is an important service for a shipper and should not be restrained. It is clearly not an attempt to avoid common carrier responsibility. It certainly is not an unjust or unreasonable practice.

As has been previously noted, one of the unique features of the driveaway industry is that the cargo it is transporting is often covered by insurance which duplicates the cargo insurance and third party liability insurance which carrier must also provide under the provisions of the Interstate Commerce Act. U.S. v. Auto Driveaway, supra.

the responsibility of the shipper.

The tariff of AAACON which is Exhibit 168 provides, in Rule 2(f), that the cost of transportation does not include repairs, replacements to vehicles, maintenance, or oil or lubrication service, each of which is an obligation of the shipper. (R.P. 1505).

Rule 11 of such tariff provides that mechanical breakdowns which occur through no fault of the carrier, are the responsibility of the shipper and the repair of same is the responsibility of the shipper. (R.P. 1505-1506).

Rule 13 of the tariff provides that the shipper is responsible for the cooling system of the vehicle. (R.P. 1506). This is a matter which came up in a number of instances involving automobiles which, because of a defect in the cooling system, became inoperative. Examples of this relate to automobiles of such witnesses as Wolfe, Raze and Harrington.

AAACON provides in Rule 27 of its tariff that it will have a vehicle examined before transported, to check for any mechanical defects, when requested by the shipper. These services are provided at an additional charge as shown in the tariff. (R.P. 1507).

It is well established in law that a carrier is not responsible for inherent defects in the commodity being transported, and AAACON may not voluntarily pay such a claim. Exhibits 206, 207 and 208 which the Judge failed to consider

EXCEPTION NO. 88 .

AAACON'S ACTIONS, PRACTICES AND PROCEDURES HAVE PASSED THE TEST OF REASONABLENESS UNDER FEDERAL LAW BOTH WITH THE COURTS AND THE COMMISSION

The Judge erred in failing to find that AAACON'S actions have been authorized by Federal statute and have "passed muster" with Federal Courts throughout the United States. The test of reasonableness, that which "passes muster" in a Federal Court, i.e. which is lawfully authorized by courts has long been the standard used.

During 1965, a hearing was held seeking Commission authority for AAACON'S operations. The findings of the Hearing Examiner and the full Commission upon exceptions to the Hearing Examiner's Report set forth in detail the nature of AAACON'S operation.

At page 3 of the report of the Hearing Examiner, Louis G. LaVeccia, served upon the parties February 16, 1966, the Hearing Examiner said:

> "Applicant is essentially a transporter of used automobiles in driveaway service. *It utilizes so-called "casual" or non-professional drivers* to perform the driving duties. These are persons who are interested, *for their own reasons, in travelling to the involved destination point or area*. The driver pays for all operating costs while en route to destination. The cost of transporting an automobile in this manner is much less than the owner would pay under available tariff provisions of conventional automobile driveaway common carriers." (Emphasis supplied)

Further, Commissioner Goff, writing for Division One of the Interstate Commerce Commission upon exceptions, his report appearing at 102 M.C.C. 393, 396-397, said:

> "The present application was filed as a result of a court decision holding that applicant's operation at Los Angeles and New York were being conducted in such a manner that the service held out to the public was for hire transportation requiring authority from this Commission. See *Interstate Commerce Commission v. A A A Con Drivers Exchange, Inc.*, 234 F. Supp 66 (1964) reversed 340 F.2d 820 (1965); Certiorari denied 381 U.S. 911 (1965). The Circuit Court noted that:
>
> > 'We are unable to share AAACON'S fears that an application for a Certificate is sure to be denied presumably on the ground that its unlawful operations show it not to be "fit."
>
> "The *Commission has not regarded such operations as a far if these were conducted in a not unreasonable belief as to their legality*, rather clearly satisfied when they have *passed muster* in the reasoned view of a District Judge'." (Emphasis supplied)

The operations of AAACON as presently constituted represent a continuation without substantive variation of those found by the Commission to have existed prior to the certification of AAACON and approved for future operations.

The casual driveaway industry is still in its infancy. The first certificates issued by the Interstate Commerce Commission with respect to the casual driveaway industry were issued in 1966. During the last five years the driveaway industry has been operating under the few Rules and Regulations propounded by the Interstate Commerce Commission with respect

Additionally, the certificate issued to DEPENDABLE CAR TRAVEL SERVICE INC., MC-125978, discloses a restriction against the transportation of automobiles "moving from or on behalf of manufacturers of new automobiles and station wagons (except licensed vehicles transported for use of personnel of manufacturers)". As in the situation of the hearing held with respect to AAACON and AUTO DRIVEAWAY, the result of the acceptance by DEPENDABLE of this restriction was a non-participation of the same type of carriers which withdrew from the AAACON proceeding as a result of its acceptance of a restriction.

It is clear that in all cases, the business sought to be protected by the restrictions imposed upon the carriers was the business of bulk haulage of vehicles in the possession of automobile manufacturers to the dealers connected with such manufacturers for their inventory, for resale thereof to the public in the ordinary course of business.

An examination of the evidence adduced at the hearing and accepted by both the Hearing Examiner and the full Commission upon review discloses that the meaning of this restriction is precisely as stated by AAACON. Three witnesses testified with respect to their business involving this question:

Mr. Angelo Cuilo testifying on behalf of Carnegie Automotive Equipment Lessors, engaged in the following colloquy (at page 117 of that transcript):

> "Q. Now would you explain what you have, what kind of business you have with Cadillac limousines?

A. These are just livery Cadillacs and chauffeurs.

Q. In the New York City Area?

A. Yes.

Q. Do you ever have occasion when these cars have outlived their usefulness as far as you are concerned, to dispose of them?

A. Oh, yes. When the market in New York is sometimes a little bit overloaded, so we have to look for markets on the outside.

Q. Such places as what?

A. Only recently we had one in San Francisco.

Ⓚ Q. You sold one of your livery Cadillacs to a Dealer in California?

A. Yes.

Q. How do you ship them?

A. By calling AAACON."

This evidence was not objected to by any of the remaining protestants and was accepted by the Hearing Examiner as valid evidence in support of the application. At Page 4 of the Hearing Examiner's Report, Hearing Examiner LaVecchia accepted in full the evidence of the witness without any question being raised arising out of the witness' testimony that he required the transportation of automobiles to "dealers." As the Hearing Examiner accepted this testimony in support of the application, so, indeed, did the full Commission upon review of the application.

It is clear that nobody objected to the witness' testimony because the meaning of the restriction as understood by all parties and the Hearing Examiner, was not meant to cover automobile dealers acting as consignees of other than automobiles shipped by automobile manufacturers.

Mr. James Mas, Jr. testified on behalf of the Connecticut National Bank which was, among other things, in the business of financing automobile paper for various people. These notes were guaranteed, and upon occasion, the original seller accepted delivery of automobiles as the result of such guarantees. The following testimony took place at pages 268-269 of that transcript:

CROSS EXAMINATION

"Q. Where exactly did AAACON deliver these cars, up to the front door of the bank?

Mr. Kiel: Objection. Asked and answered.

Mr. Ross: Mr. Examiner, I submit it was answered in two different ways. Certainly it is a fair question on recross.

Exam. La Vecchia: Overruled. Witness may answer.

A. Well, I don't know where the driver parked the car. He came in to the bank and from that point I sent one of my representatives to go down to the car to go move it to a location of where the bank would be more suited to have the car placed. It could have been parked on the street, for all I know.

Q. (By Mr. Ross) Mr. Mas, as far as you are concerned that car was being returned to a dealer?

Mr. Kiel: Objection.

Mr. Ross: I submit it is not an objectionable question.

Exam. LaVecchia: Overruled.

Mr. Kiel: I didn't have an opportunity to finish my objection. The physical delivery of the car was explained by the witness, and what the further disposition of that car is, is immaterial to this proceeding.

Mr. Ross: I submit it is material.

Exam. LaVecchia: Overruled.

Mr. Kiel: I asked the Examiner to rule.

Mr. Ross: I beg your pardon.

A. Would you restate the question?

Q. As far as you were concerned, you were returning that car to a dealer, were you not?

A. In both cases, yes.

Mr. Ross: I have no further questions.

Exam. LaVecchia: Thank you, Mr. Mas."

Immediately after this testimony was given by the witness, remaining protestants' counsel moved to strike the witness' testimony in view of the fact that the witness "says it is being returned to a dealer and the application has been restricted against transportation to a dealer." Hearing Examiner LaVecchia denied the motion and accepted the testimony in support of the application.

At Page 8 of the Hearing Examiner's Report the Hearing Examiner completely accepted the testimony of Mr. Mas despite the fact that Mr. Mas clearly and unequivocally stated that the automobiles which he caused to be shipped were going to the guarantors of recourse notes who also happened to be automobile dealers. It is clear from the foregoing that the restriction accepted by AAACON had no application to the shipment of repossessed automobiles moving to guarantors of financing agreements because these shipments were not made for or on behalf of manufacturers of automobiles to go to dealers to be received into their inventories for resale to the public in the ordinary course of business.

Finally, the testimony of Mr. Herbert Cooper testifying on behalf of CAR TRADERS INC. gives further enlightenment concerning the meaning of the restriction. Mr. Cooper testified that he moved a number of cars to Seattle, Washington, which eventually went to dealers. After lengthy examination and cross examination, the witness disclosed that his automobiles moved first to an automobile auction in Seattle and thence, in many cases, to dealers. Hearing Examiner LaVecchia initially struck the testimony on the grounds that Car Traders "... never ships automobiles to individuals but always to dealers." (At page 5 of the Hearing Examiner's Report).

Subsequently, however, in the opinion of the Commission at 102 M.C.C. 393, 396, the Commission specifically discussed this matter and reversed the Hearing Examiner and held that the evidence of Car Traders was properly admissible. The Commission stated as follows:

> "Car Traders is a wholesale dealer of used cars. Annually, it consigns about 150 cars, usually one at a time, to an auctioneer at Seattle, Washington. The evidence is clear that the auctioneer sells to dealers and to the public on behalf of Car Traders under a consignment to the auctioneer. The transportation is performed from the dealer or the shipper to its agent, the auctioneer in Seattle. We find that the auctioneer is not a 'dealer' as that term is generally understood."

Once again the Commission concluded that the mere fact that the consignee of the vehicles sold vehicles to the public was not sufficient to make of that consignee a "dealer". It also following facts:

Mr. Serby, an attorney representing withdrawing protestant Motor Convoy Company, which had also withdrawn from AAACON's case, stated that this restriction, which had been agreed to by the applicant, was based specifically upon the restriction agreed to in the AAACON case (record Page 10).

Exhibit "1" to the record which contains a written statement of Dominick Spinelli introduced in evidence, contains the following language at page 6: "The commercial phase of the business includes, 1) returning repossessed vehicles for banks, finance companies and financial adjustors..." (We note the use of word "for" rather than "to".)

The examination in the Spinelli case, supra, of Mr. George Osler representing the Osler Investigation Service, sheds further light on the nature of the transactions involved. In cross-examination by Mr. Harry Ross, representing Auto Driveaway Company, the following colloquies occurred:

> "Q. Now, you have been doing business with banks and finance companies over many years, 47 years, I believe you said?
>
> A. Yes.
>
> Q. Is it your impression from doing business with these banks and finance companies over the years, that as an ordinary thing they have recourse against a dealer or against someone when they repossess a car?
>
> A. Recourse or repurchase?
>
> Q. Repurchase agreement.
>
> A. That's right.
>
> Q. So the individual primarily responsible for expeditious transportation is the party for whom the bank has recourse?

BEST COPY AVAILABLE

A. That's right.

It will be noted that with respect to this testimony, Mr. Ross appears to have been trying to prove that the witness was not competent to testify concerning the need for additional service. He concentrates on the issue of the nature of a shipment after repossession on a recourse financing agreement and made no attempt to negative the value of such testimony on the grounds that the automobiles were to be sent to the guarantors on the recourse agreements, who may or may not have also been doing business as automobile dealers. It is crystal clear that no negative implication was drawn, either by the applicant, the protestants, the hearing examiner or the Commission, from the fact that shipments of this nature were to be used as support for an application restricted against the movement of automobiles to automobile dealers.

AAACON has searched the cases and records available in the extensive libraries of the Commission in vain, for a single word of information which would lead us to a conclusion contrary to the position here taken. Beyond the peradventure of a doubt, the restriction sought by certain of the protestants whose interest in the proceeding was thereupon terminated and agreed to by AAACON, was meant to protect the business of moving automobiles from manufacturers to dealers.

AAACON has never engaged in such business. Further, despite its unquestionably proper view of the real meaning of the limitations of its certificate, AAACON has never engaged in the business of moving automobiles from any persons or

H. C. [illegible]: RESIDENT VICE PRESIDENT
Robb B. Leonard: ASSISTANT BRANCH MANAGER SALES

FIREMAN'S FUND AMERICAN
INSURANCE COMPANIES

SAINT LOUIS BRANCH OFFICE: 14 SOUTH FOURTH ST. • 900 THOMAS JEFFERSON BLDG. • ST. LOUIS, MO. 63102
PHONE: AREA CODE 314 621 8404

December 31, 1969

Mr. Gerhard J. Petzall
818 Olive Street
St. Louis, Missouri 63101

Dear Mr. Petzall:

This letter is in reference to our telephone conversation earlier today.

Our named insured is not being denied coverage in this case.

As per our telephone conversation with Mr. Lester Seasongood today, we agreed to pay the premium on a bond to release this attachment as per sub-paragraph (b), Supplementary Payments, of our contract of insurance. Sub-paragraph (b), Supplementary Payments, reads as follows:

> "premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed $250.00 per bail bond, but without any obligation to apply for or furnish any such bonds;"

Thank you for your cooperation in this matter.

Sincerely,

Fred J. Dashman
tlc

Fred J. Dashman
Claim Department

/tlc

cc: Mr. Lester Seasongood
Commercial Insurors
1015 Locust Street
St. Louis, Missouri 63101

APPENDIX 1029

APPENDIX I

Certain facts and issues raised before the Hearing Examiner were matters of continuing development, which said developments came to the attention of respondent after the printing of respondent's brief.

THE SLATTERY CLAIM

In the claim of witness Slattery, questions were raised during the course of the hearing as to whether the claim submitted by Slattery was valid or whether it was an overreaching attempt to obtain money from Aaacon on a questionable and perhaps fraudulent basis. The position of the Bureau of Enforcement was that from their review of the testimony of witness Slattery there was "clear liability" on the part of Aaacon. (See the brief of the Bureau of Enforcement, page 201).

After extensive delay on the part of Slattery and his insurance company, Aaacon was finally given permission, several months after the close of oral hearings in this proceeding, to have the Slattery vehicle inspected by an expert adjuster, Daniel Griffin. His report, in the form of an affidavit, confirms the suspicion of Aaacon that the very limited damage to the Slattery vehicle did not merit the extensive repairs suggested by the estimates submitted by Slattery's insurance company.

Thus, the limited repairs in the nature of straightening of the fenders actually made on the Slattery vehicle do not conform to the "paid bills" for fender replacement submitted by Slattery. Annexed hereto as Exhibit "A" is the report in affidavit form of the adjuster, Daniel Griffin. Instead of requiring a replacement of fenders, the actual repairs performed were in line with the testimony of Aaacon during the hearings that the damage could be repaired merely by straightening rather than replacing the fenders.

Moreover, the repair to the fenders is the type of damage correction which would have been warranted by the fact that the vehicle was originally tendered to Aaacon by the shipper with damage to the same fenders in the same area -- the left front and left rear fenders. The adjuster's report obtained by Aaacon has been submitted to Slattery's insurance company which has voluntarily offered to amend its claim by reducing the amount thereof, but has to date not been able to explain the misrepresentation.

It is respectfully submitted that the ongoing investigation in the Slattery matter not only supports Aaacon's contention that its liability to Slattery was less than "clear", but also supports Aaacon's contention that, with all due respect to the Bureau of Enforcement, its personnel, who had only limited access to one side of the facts of each case prior to the hearing, could not put themselves in the shoes of Aaacon, or make more accurate determinations of liability even after hearing both sides of the proceedings. Indeed, the Slattery matter and many of the other cases presented by the Bureau of Enforcement demonstrate that there can be no fixed standard of reasonability in handling a claim settlement -- in which human judgment plays an all-important part.

The foregoing supports, and gives rationale for the position taken by the Commission on many occasions that it cannot and will not participate in the adjudication of individual claims, and the Commission's suggestion to parties who cannot agree on claims settlement, to have matters settled by impartial tribunals. As stated in its brief, Aaacon does not mean to imply that all of the claimant witnesses engaged in knowing misrepresentation. A comparison of the charges contained in testimony presented by many of the Bureau's witnesses with the subsequent explanations, documents and testimony presented by Aaacon clearly show that, in many instances, the Bureau's witnesses were unaware of, and could not present, the full facts of the case. Rather, what has occurred in several instances is that the claimant has either obtained hearsay statements or has drawn unsubstantiated conclusions and has determined from them that his claim is justified and correct. Inherent in hearsay is the defect that the initial author of the statement cannot be cross-examined nor the bases of the statements scrutinized. Such a cross-examination and scrutiny might have revealed to the claimant some of the material which Aaacon's own investigation developed and which led Aaacon to the reasonable and rational bases it used in declining those claims. This same hearsay defect permeates the testimony of the Bureau of Enforcement's witnesses.

It was and remains Aaacon's belief that had it been confronted in advance with the allegations made by the witnesses in the cases submitted by the Bureau of Enforcement, it could have supplied the answers and much of the time of this hearing could have been saved.

It would thus appear that the sole standard to be applied is "whether the claim settlement by Aaacon in any given case lacked *any* reasonable basis for justification" and not "whether personnel of the Bureau of Enforcement would have settled the case differently."

To cite but another corroborative instance, it is noted that in the Raze matter, the claimant's testimony might at first blush seem eminently reasonable, but subsequent investigation by the carrier, which evidence was made available during the hearing, indicated that the trunk size was actually physically smaller than, and could not have possibly contained, the alleged contents. It is interesting to note that testimony as to the trunk size was omitted from the Bureau of Enforcement's summary of testimony. Other examples present themselves, such as the Bureau of Enforcement's omission of any reference to the fact that the tires in the La Frazia claim were dangerous and unlawful, but respondent will leave these to the Hearing Examiner in his review of all of the testimony presented.

THE NADLER CLAIM

On August 24, 1972, Aaacon received a Notice of Trial in the matter of Reliance Insurance Company, as subrogee of Louis Nadler, against Aaacon Auto Transport, Inc., et al. A copy of said Notice of Trial is annexed hereto as Exhibit " B". This notice completes and defines for trial purposes the claims of Mr. Nadler's insurance company. It should be noted that the claim is limited to $671.85 -- the amount expended for the second repair on the Nadler vehicle. On the day this notice was received, your deponent telephoned Martin Rosen, Esq., attorney for Reliance Insurance Company, who confirmed that Reliance Insurance Company was not seeking to recover the expenditure for the first accident in the amount of approximately $700.00.

It has been Aaacon's contention that the first accident to the Nadler vehicle was caused by an inherent mechanical defect, to wit, brake failure. It is clear that Mr. Nadler's insurance company has accepted the validity of Aaacon's denial by not including the claim for the first accident in its law suit. Corroborating the foregoing, annexed hereto as Exhibit " C " is the Demand for Bill of Particulars by Aaacon and the response thereto by the Reliance Insurance Company, showing that the only accident which is in dispute between the parties and for which Reliance is seeking recovery is the second accident which occurred on December 16, 1969.

It is thus clear that contrary to the opinion of the Bureau of Enforcement, at page 208 of its brief, there was nothing "inconsistent" about Aaacon's declination of the first accident on the grounds of mechanical failure and the second accident on the grounds of an act of God. It is further clear that not only Aaacon, but the actual party making payment for the repair, Reliance Insurance Company, concurs in the view that the first accident was not Aaacon's responsibility.

COGGINS CLAIM

Other matters which have occurred subsequent to the hearing and which are relevant, include the fact that Aaacon has dismissed the agent in Atlanta responsible for the transportation of Coggins' vehicle. At page 218 of the Bureau of Enforcement's brief, the Bureau apparently deemed it inappropriate for Aaacon to continue the employment of its agent in Atlanta. The agent in question was dismissed prior to Aaacon's receiving the brief of the Bureau of Enforcement. If the Bureau of Enforcement deems that it has the authority and/or the expertise to determine that this agent should be fired, it will be happy to know that its demands have been met.

INSURANCE COVERAGE

Another fact that has come into existence subsequent to the course of the hearing and the printing of the briefs herein is that, in the case of AAACON AUTO TRANSPORT, INC. v. THE HOME INDEMNITY COMPANY, United States District Court, Southern District of New York, Docket No. 72 CIV. 2626, which was cited in Aaacon's brief, Aaacon's insurance company, the Home Indemnity Company, has moved to dismiss the case on the grounds that Section 215 insurance filings with the Commission by The Home Indemnity Company do not create a federal cause of action but create rights and liabilities which are to be determined solely by the laws of the various states, citing State Farm v. Parry, 123 F.2d 243 (8th Cir. 1941).

In this regard, Aaacon, through its attorneys, invited the Commission to participate as an intervenor or party amicus in the proceeding, inasmuch as, if the Federal District Court rules that a violation of federal law does not arise by the refusal of a liability insurance company to defend Aaacon's shippers, this would have a bearing upon the issues to be determined in the instant proceeding.

Annexed hereto as Exhibit "D" is a letter of August 1, 1972, from your deponent as attorney for Aaacon, to the Commission, and annexed hereto as Exhibit "E" is a letter of August 9, 1972, in which the Commission declined to participate on the ground that if the insurance company met the filing requirements of Section 215, the other questions of insurance company coverage of third parties is not of "sufficient interest" to the Commission.

The significance of the litigation between Aaacon and the Home Indemnity Company in the instant proceeding, is that if the Home Indemnity Company is successful in having the case dismissed, it becomes clear that there is no federal law, either in statutory form or court policy, which governs the payment by a carrier of third party liability claims or coverage of shippers, and that the laws of the several states are controlling in that matter.

Accordingly, in those cases where third party claims are involved, e.g., the Rust claim and the Levy claim, it would then be for the laws of the several states to determine questions of primary coverage, secondary coverage, contribution, duty to defend and cost of defense. Therefore, where, as is the case with Aaacon, the carrier has obtained insurance coverage, and where the insurance company has control of the defense of claims by third parties, the insurance company would be free to take such actions as it deems appropriate in accordance with the laws of the states involved.

Another issue which developed subsequent to the close of the hearing and which has relevance to these proceedings regarding insurance coverage is the recent unanimous decision of the United States Court of Appeals for the Seventh Circuit in UNITED STATES v. AUTO DRIVEAWAY CO., Docket No. 60-2241, decided

July 25, 1972, after the close of the hearings in these proceedings. In that case, the Court of Appeals held that the driveaway of automobiles is a unique business involving the transportation of cargo which generally has in effect prior insurance thereon. The Court of Appeals distinguished the shipper's own insurance on motor vehicles from insurance effected by shippers to cover other cargo, and held that it is proper and lawful for auto driveaway carriers to seek and obtain the benefit of insurance which the shipper had effected on the vehicle. The Court went on to note that a carrier obtaining the benefit of insurance effected by the shipper upon an automobile, did not violate 49 United States Code 316(d) as an undue preference. A copy of the decision is annexed hereto as Exhibit " F ".

ARBITRATION

In addition to the Federal Court decisions throughout the United States which Aaacon cited in its brief as upholding and enforcing the arbitration provision in Aaacon's Bill of Lading, most recently the United States Federal District Court for the District of Massachusetts also upheld and enforced arbitration of a claim against Aaacon. Annexed hereto as Exhibit " G " is a certified copy of the decision by N. Arthur Garrity, Jr., Judge, United States District Court for the District of Massachusetts, in *Aaacon Auto Transport, Inc. v. Schwarz*, Docket No.71-2752-G

AFFIDAVIT

On June 8, 1972, I accompanied Milton J. Guth to inspect the Slattery vehicle, a 1970 Impala. I found that the left front fender and the left rear quarter panel were repaired with synthetic plastic, which is commonly used in the repair of an auto panel. This material was used extensively in both panels. Whenever a panel is repaired, there are noticeable ripples in the polished finish, which is not found in a new panel. No new fenders were replaced on the vehicle. I have had 10 years in the auto body field, including 3 years of management.

Daniel J. Griffin
Daniel Griffin

Sworn to before me this 19 day of June, 1972.

ALGIS SIRVAITIS, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

CIVIL COURT: NEW YORK COUNTY

-- X

RELIANCE INSURANCE COMPANY AS SUBROGEE
OF LOUIS NADLER

PLAINTIFF

-against-

BILL OF PARTICULARS

AACON AUTO TRANSPORT INC AND SAMUEL
M.HITT

DEFENDANT

-- X

Plaintiff for its bill of particulars , alleges:

1. Upon information & belief, the bailment agreement was written,copy ofwhich is attached hereto

2. Defendant breached contract by damaging car while same was bring transported by defendant

3. Defendant negligent in driving carelessly and negligent and striking a deer on the road and failing to stop in time; in having defective brakes; in failing to use brakes; in driving too fast under the traffic conditions then and thre prevailing; in being negligent & carless in the operation of the vehicle being transpoted

4. Dec 16,1969 at about 1 AM

5. Damages- see annexed estimate of damages

Dated, August 24,1971

Yours etc

Martin Rosen
Attorney forPlaintiff
277 Broadway
New York, New York 10007

to: Zola & Zola Esqs
Attorney for Defendants
1472 Broadway
New York, New York

APPENDIX

investigatory proceedings to inquire from Aaacon as to the nature of Aaacon's claims procedures, the circumstances which supported Aaacon's claims procedures or even the results which Aaacon obtained in its investigation of the cases which the Bureau presented. Apparently, the Bureau has also determined after the hearings in these proceedings, to act as though there is only one side to situations they presented and to stick its head in the sand with regard to the voluminous testimony, substantiation and documents which Aaacon has presented.

Moreover, the Bureau has also apparently taken the position that "the law is what the Bureau says it is". The Bureau has not considered or attempted to distinguish the volume of legal decisions from courts of many jurisdictions and levels throughout the United States, supporting respondents' positions. Indeed, they treat this voluminous body of decision from the Supreme Court of the United States to Circuit Courts of Appeal to Federal District Courts as if they could somehow wish them out of existence.

THE NADLER CLAIM

The Bureau of Enforcement has sought to suggest with regard to the Nadler claim that Aaacon had declined the first of Mr. Nadler's two claims on two different grounds. The truth of the matter, as clearly indicated by the testimony of your deponent in the proceeding (Tr 1846) and Mr. Nadler (Tr 318), is that Aaacon's investigation of the first accident resulted in the determination that the damage was caused by an inherent mechanical defect in the vehicle. This information was made available to Mr. Nadler in Aaacon's letter of January 7, 1970, which discussed Aaacon's findings with regard to accidents. This letter was introduced by Mr. Nadler, the Bureau's witness, in direct examination by the Bureau (Tr. 325). It was as to the questionability of the findings in the second accident resulting from an "Act of God" that Aaacon offered to make a settlement -- which was explained to Mr. Nadler at that time, as the Bureau's Exhibit 43 indicates.

Said settlement was subsequently rejected by Mr. Nadler and was reoffered by your deponent on behalf of Aaacon in my letter of June 9. The cause of the first accident and Aaacon's non-liability therefor have never been questioned by Mr. Nadler's insurance company, which made payment thereon as previously indicated in respondents' petition to reopen proceedings.

The misuse of the plural "causes of accidents" in my letter of June 9 does not detract in any way from the fact that Aaacon had already offered a full explanation of the results of its investigations of both accidents and the reasons therefor in its prior letter of January 7, 1970. Nevertheless, from the June 9th letter the Bureau of Enforcement divines that Aaacon "obviously had failed to conduct a bona fide investigation into the cause of the first accident" -- despite the fact that Aaacon's investigation is set forth in the record and despite the fact that the insurance company for Mr. Nadler came to the same conclusion, despite the fact that Mr. Nadler admits receiving the explanation and despite the lack of as much as a single scintilla of contrary evidence.

The Bureau attempts to dismiss the conclusion reached by Mr. Nadler's insurance company and Aaacon as to the mechanical cause of the first damage by speculating on page 5 of its reply that the insurance company "may not have been subrogated to Mr. Nadler in the first accident". This flies in the face of the testimony of their own witness, Mr. Nadler (Tr 315), as well as the summary of his testimony at page 46 of their brief, dated July 14, 1972, wherein with regard to the first accident it is noted that Mr. Nadler's company arranged for the repairing of said vehicle and paid for same. Thus, it is clear that contrary to the statement of the Bureau on page 6 of their reply to petition, not only was an explanation of the first accident received by Mr. Nadler (Tr. 318) as contained in the Bureau's Exhibit 43, but that Aaacon's thorough investigation and declination of the first accident accorded with the investigation conducted by Mr. Nadler's insurance company.

As to Aaacon's offer of compromise of the claim, the Bureau's remarkable position is that Aaacon must either "be responsible or not". This flies in the face of the offer of the compromise of the claims permitted in Administrative Rule No. 120 issued by the Commission after the close of these proceedings wherein, in answer to the first question, the Commission notes that a compromise of claims may be offered by carriers. In the Nadler case, the reason for the attempt at compromise by Aaacon for the second accident was the fact, as testified by your deponent during the course of these proceedings, (Tr. 1848, 1849), that when a wild animal does damage to a vehicle there may or may not be a legal defense of Act of God, depending upon the separate facts of each case. This is confirmed by the Bureau's Exhibit 43.

It is inconceivable how the Bureau can continue to state in its reply (page 6) that "no explanation" was ever given by Aaacon for the cause of the first accident in light of:

1. Aaacon's letter of explanation dated January 7, 1970.

2. Nadler's testimony that he received said letter.

3. The Bureau's full knowledge of said letter of explanation.

4. The Bureau's offering said letter of explanation into evidence as Exhibit 43.

Apparently the Bureau has not and will not consider any facts which undercut the conclusions it wishes to reach, despite the even-handed nature of this "investigatory" proceeding.

INSURANCE REPRESENTATIONS

As to the holding out of carriers with regard to insurance, the Bureau of Enforcement has raised a brand new issue.

With regard to the propriety of holding out by carriers concerning insurance coverage, Aaacon noted in its testimony, Exhibit 363 in these proceedings, that certain carriers were beginning to advertise "fully insured" with regard to automobile transportation. One of these carriers, the B & O/C & O Railroad, had no policy of insurance whatsoever.

Subsequent to the close of the hearings herein, your deponent brought this matter to the attention of George M. Stafford, Chairman of the Interstate Commerce Commission, who informed your deponent that compliance with tariff provisions was in and of itself sufficient to permit a carrier to hold out that it was "fully insured".

Copies of the letter by Chairman Stafford, the reply of your deponent and his response are annexed hereto as Exhibits "A", "B" and "C".

Aaacon had, previous to the institution of these proceedings, voluntarily ceased advertising "fully insured" with regard to transportation services on the advice of Mr. Len Schloer, Chief, Section of Insurance of the Interstate Commerce Commission, as indicated in the testimony in these proceedings. Accordingly, Aaacon thereafter wrote to Mr.

Schloer concerning the correspondence of your deponent, Chairman Stafford and Mr. Thomas J. Burns, Chief, Section of Railroads, which is summarized in Aaacon's letter of September 26, 1972, a copy of which is annexed hereto as Exhibit "D". To date, no response to the last letter has been received.

These letters make quite clear the position of the Commission itself that the use of the words "fully insured" in our advertising is perfectly proper. These letters also raise questions as to whether voluntary elimination by Aaacon of the representation "fully insured" may have well gone far beyond the Commission's requirements.

With regard to third party liability insurance, an apparent misunderstanding seems to have arisen concerning the coverage of Aaacon's insurance policy from the fact that in Aaacon's copy of Exhibit No. 170, page 2 of one of its insurance policies may not have been reproduced. A copy of page 2 is annexed hereto as Exhibit "E". The language under the "Definition of Insured" Section III thereof indicates that the insurance coverage for liability applies to the "named insured (Aaacon) and .... also includes any person while using the automobile (the driver) and any person or *organization legally responsible for the use thereof*" (i.e., the shipper, car owner, who is responsible in all states under the doctrine of vicarious liability of car owners). *American Ins. Co. v. Canal Ins. Co.*, 258 F2d 934 (4th Cir. 1958); *Financial Indemnity Co. v. Hertz Corp.*, 266 Cal. App. 2d 689, 38 Cal. Rptr. 249 (1964). Thus, it is clear that Aaacon's liability policies, in the amount of $3,000,000., covered the named insured, Aaacon, *and* cover the car owner as "a person legally responsible for the use thereof".

It is hoped that this additional Exhibit "E", which may have been omitted from the copies of Exhibit No. 170 as page 2, will set to rest once and for all the question of who is actually covered under Aaacon's policies of liability insurance. The decision of Aaacon's insurers to defend any particular case in any manner is beyond Aaacon's control or the control of the Commission. See *Aaacon v. Home Indemnity* referred to in Aaacon's motion to reopen, and *State Farm v. Parry*, 123 F2d 243 (8th Cir. 1941), and the discussion thereof in Aaacon's brief dated July 14, 1972.

Moreover, *without any support in the record whatsoever*, the Bureau of Enforcement states, at page 7 of its reply dated October 5, 1972, that Aaacon attempts to place liability on the shipper's insurance company. The Bureau can point to no testimony, because none exists, that Aaacon ever declined any claim, or refused to accept liability therefor on the ground that a shipper had insurance. This has never been Aaacon's practice. The Bureau's use of language that Aaacon told a shipper to "look to its own insurance company" is nothing more than the Bureau's continuing disregard of the decision in U.S. v. Auto Driveaway Co. Docket #71-1237 (7th Circuit 1972) and the Bureau's own creation out of whole cloth of non-existent testimony to the effect that Aaacon declined liability for a claim on the basis of the existence of the owner's insurance. There is not a shred of testimony to indicate that Aaacon ever told any shipper that Aaacon declined liability or would not accept notice of a claim or fail to investigate a claim because the shipper had prior insurance on the vehicle.

On the contrary, the record clearly indicates Aaacon's determination of its liability for a claim, is made and has always been made, independent of the availability of insurance. Exhibits 179, 177, 174 and Tr. 1472-1494. See also, for example, testimony concerning the Coggins' claim and Exhibits 317 and 312-320.

If it is lawful for a carrier to claim the benefit of insurance as the United States Court of Appeals for the Seventh Circuit indicated, and if, as the record clearly indicates, Aaacon has never declined a claim, refused to investigate a claim, refused to accept liability, or failed to make a determination of its liability on the grounds that there existed other insurance, respondents must question the grounds on which the Bureau is seeking to assert this groundless and unsupported characterization, except its own simple refusal to consider the facts.

THE SCHWARZ CASE

As to the Schwarz decision, the Bureau has again indulged in speculation, unsupported by any facts, upon which it apparently feels it can "discover" unlawful practices on the part of Aaacon.

Annexed hereto, as Exhibit "F" is a letter from counsel for the defendant in the Schwarz matter, indicating that prior to the decision in Aaacon v. Schwarz said counsel desired arbitration in Massachusetts. Said arbitration was formalized in the order of the United States District Court for Massachusetts in the Schwarz case which was not, as the Bureau implies a case litigated without the existence of, or notice to, opposing counsel.

Interstate Commerce Commission
Washington, D.C. 20423

CE OF THE VICE CHAIRMAN

April 14, 1972

Mr. Ralph J. Zola
Zola and Zola
Counsellors at Law
1472 Broadway
New York, New York 10036

Dear Mr. Zola:

This is in reply to your letter of April 7, 1972, concerning a recent advertisement in the New York Times regarding service being offered by "Auto Trans."

While any advertisement is interpreted by the viewer, depreciation undoubtedly means the wear and tear of transporting the automobile over the highway. Reference to transportation being fully insured is probably an appropriate statement inasmuch as railroads usually carry their own insurance. I am sure that the advertiser, in using the word safe, fully expects to perform safe transportation of the vehicle.

While advertisements such as mentioned by you must not be misleading, the carrier's obligation for the service to be performed is that which is specified in its tariffs officially filed with this Commission. To assure that there is no violation of the tariff provisions or the provisions of the Interstate Commerce Act, I am instruding our Bureau of Operations to look into the matter.

I appreciate your bringing this matter to my attention.

Sincerely yours,

George Stafford
George M. Stafford
Chairman

APPENDIX 1651

EXHIBIT A

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

September 26, 1972

Mr. Len Schloer
Chief, Section of Insurance
Interstate Commerce Commission
Bureau of Operations
Washington, D. C.

Dear Mr. Schloer:

As you may recall, over two years ago, you advised me that in your opinion it was improper for a carrier to advertise that it was "fully insured" in light of the fact that there are certain exceptions to carrier liability which a cargo insurance policy would not cover. As you know, in accordance with your suggestion, we at that time eliminated the phrase "fully insured" from our advertising.

Recently it has come to our attention that the B&O/C&O Railroad had been advertising "fully insured" in connection with its Auto Trans Service.

I wrote to the Commission concerning this holding out especially that in light of the fact that as a railroad, B&O/C&O provides no insurance policy on any of its shipments of automobiles. We recently received a reply from Thomas J. Byrne, Chief, Section of Railroads, which would seem to indicate (1) that a carrier may advertise "insured" when it has no policies of insurance, and (2) that carrier liability including the exceptions thereto constitutes sufficient coverage to permit advertising "fully insured." I enclose the correspondence in question.

Your comments on this would be greatly appreciated.

Very truly yours,

Ralph J. Zola

RJZ:lm
Encls.

APPENDIX 1652

EXHIBIT D

Interstate Commerce Commission
BUREAU OF OPERATIONS
Washington, D.C. 20423

May 1, 1972

IN REPLY REFER TO: L-21335

Mr. Ralph J. Zola
Executive Vice President
Aaacon Auto Transport, Inc.
147 West Forty-Second Street
New York, New York 10036

Dear Mr. Zola:

I am sorry for the delay in responding to your letter of February 28, 1972, addressed to General Counsel Kahn.

It is true, as District Supervisor Willis has advised you, that there is no regulation of this Commission requiring that agents of carriers make clear their status of agent in their advertising. However, the content of advertising by authorized carriers, directly or through their agents, is subject to scrutiny by the Commission, and the Commission may require revision if it is shown that statements therein are in violation of the Act or the regulations thereunder.

I assume that A A A Driveaway Service in Dallas is advertising in the telephone directory without showing that it acts as agent for Insured Driveaway System, and that you feel that persons may confuse the A A A Driveaway name with the name of your company. If this is the situation, I suggest that you take up the matter with the publishers of the directory.

Very truly yours,

W. F. Sibbald, Jr., Chief
Section of Motor Carriers

APPENDIX 1633

EXHIBIT C

Interstate Commerce Commission
BUREAU OF OPERATIONS
Washington, D.C. 20423

September 8, 1972

IN REPLY REFER TO L-21535

Mr. Ralph J. Zola
Executive Vice President
Aaacon Auto Transport, Inc.
147 West Forty-Second Street
New York, New York 10036

Dear Mr. Zola:

This responds to your letter of August 21, 1972.

In my letter of May 1, 1972, I advised that there is no regulation of the Interstate Commerce Commission requiring that agents of carriers make clear their status as agents in their advertising. There has been no change in the situation.

Very truly yours,

T. J. Delaney, Chief of
Interpretations
Section of Motor Carriers

APPENDIX 1654

EXHIBIT I

LAW OFFICES
WILSON, WOODS & VILLALON
SUITE 1032 PENNSYLVANIA BUILDING
PENNSYLVANIA AVENUE & 13TH STREET N.W.
WASHINGTON, D. C. 20004
202 638-4600

JAMES E. WILSON
WARREN WOODS
EDWARD G. VILLALON
BETTY SOUTHARD MURPHY
JON I. HOLLENGREEN
LAWRENCE E. LINDEMAN

LEONARD APPEL
COUNSEL

September 11, 1972

Mr. Robert Maxwell
Claims Department
AAA Con Auto Transport, Inc.
147 W. 42nd Street
New York, N.Y. 10036

Dear Mr. Maxwell:

On behalf of General William R. Wolfe, Jr., it is requested that you forward immediately to Mrs. W. R. Wolfe, Jr., of 215 Robinhood Road, Jackson, Miss., the necessary forms for which a claim may be presented to AAA Con Auto Transport. I am sure that your files will contain numerous correspondence relating to this matter.

It is specifically requested that you send me a copy of your letter of transmittal to Mrs. Wolfe for the transmission of these forms. I trust this matter will receive your early attention.

Very truly yours,

James E. Wilson

JEW:gl

APPENDIX 165K

EXHIBIT J

subsequent to the close of such hearing.

III. THE LEVY MATTER

Attached to the affidavit of Ralph J. Zola as an exhibit and made a part thereof is a copy of an order of the United States District Court for the Southern District of New York dated September 19, 1972 and filed on September 22, 1972, in which the Honorable Marvin E. Frankel, United States District Judge directed and compelled John D. Levy, Jr. and Lucy S. Levy to arbitrate all claims which the Levys have against Aaacon, pursuant to the arbitration agreement contained in Aaacon's bill of lading, in the City and State of New York upon documents alone. Judge Frankel issued such an order to avoid inconvenience and expense to the Levys who are citizens of Missouri. Judge Frankel decided that under Aaacon's bill of lading agreement to arbitrate which incorporates the rules of evidence of New York, CPLR 3117, permitting the use of documents as evidence where a party resides more than 150 miles from the locus of the hearing, it was not required that the Levys or their counsel physically appear within the City and State of New York. It should be noted that the situs of the arbitration was in no way changed by Judge Frankel. This order represents the judgment of a United States District Court that with respect to the Levy matter, Aaacon was acting in a lawful, enforceable, just and reasonable manner in demanding arbitration by the

Levys, Missouri residents, with respect to their claim. Judge Frankel was informed by counsel for the Levys of the proceedings herein as well as the prior litigation before the New York Supreme Court.

On October 30, 1972 an Appeal was taken by the Levys to the United States Circuit of Appeals for the Second Circuit. Said appeal was dismissed on March 5, 1973.

a) The evidence with respect to these two court proceedings is not cumulative in effect with respect to the Levy matter, as previous to these decisions there was no similar evidence of the enforceability and reasonableness of Aaacon's actions with respect to the arbitration provision which had been vigorously contested by the Levys. For the first time in this particular matter the United States Courts have placed their imprimatur upon Aaacon's actions.

b) This evidence could not have been presented prior hereto because the Federal District Court orders the Appeal or the Dismissal thereof had not been issued before the termination of the hearing. Aaacon failed to present the order of September 19, 1972 in its prior Petition to Reopen because by that time counsel for the Levys had filed Notice of Appeal and Aaacon felt that upon this ground it could not fairly characterize the actions of the United States District Court as dispositive of the issue. With the dismissal of the appeal in the Levy case, this is no longer true.

IV. THE SLATTERY MATTER

Annexed to the affidavit of Ralph J. Zola as an exhibit and made a part thereof is letter dated July 6, 1972 from Wesley J. Sliter, claims representative, American States Insurance Company.

Mr. Sliter sets forth his intention to proceed with litigation upon the Slattery matter unless Aaacon reimbursed American States Insurance within twenty days for its payment to Slattery. Annexed to the affidavit of Ralph J. Zola as an exhibit and made a part thereof is Aaacon's reply to Mr. Sliter signed by Ralph J. Zola, Executive Vice President, setting forth the report of Aaacon's adjustor who was finally permitted to examine the Slattery vehicle after months and months of delay. Included in this letter also were photographs of the vehicle at destination and a statement of the adjustor of the American States Insurance Company setting forth a proposed scheme of reimbursement to Slattery in which he would attempt to recover from Aaacon for alleged damages and false repairs to which he was not entitled.

At the time of writing the letter of July 7, 1972 Mr. Ralph Zola had a telephone conversation with Mr. Sliter in which Mr. Zola set forth Aaacon's findings with regard to the misrepresentations made by Slattery as to the nature of the damage and the extent of repair. A recital of these 'phone conversations is more fully set forth in the affidavit of Ralph Zola.

On November 14, 1972 the statute of limitations elapsed with regard to the Slattery claim, arising out of the fact that Aaacon had denied Mr. Slattery's claim of November 13, 1970. Despite the fact that the American States Insurance Company was aware that the statute of limitations was running, they took no action and, in fact, have declined to act further to enforce Mr. Slattery's alleged "claim" against Aaacon based on Mr. Zola's letter of July 7, 1972 which raised the issue of Mr. Slattery's improper actions in the presentation of his "claim". This is of further interest in view of the fact that in their letter of July 6, 1972, prior to their having received Mr. Zola's letter of July 7, 1972, they had made clear that under the limited facts then known to them they intended immediately to proceed to litigation. Thus, after Mr. Slattery's insurance company became aware of Mr. Slattery's action, they abandoned their claim against Aaacon, made no further claims either orally or in writing that Aaacon had not acted in a perfectly proper manner from the inception of this claim, or that Aaacon was in fact liable at all, and they permitted their claim to lapse.

a) This evidence is not cumulative in nature because for the first time Aaacon is able to present to the Commission the full facts and final results of a matter of which the Commission could only have had limited knowledge from the presentation of evidence by the Bureau of Enforcement.

b) This evidence could not have been fully presented at the hearing held herein because it did not exist at that time.

V. THE RUST CASE

The affidavit of Ralph Zola sets forth the latest developments in this case which the Bureau of Enforcement had alleged an instance of improper procedure on Aaacon's part with respect to its insurance coverage. Mr. Zola's affidavit states that all charges of fraud, wrong doing or liability on the part of Aaacon or its driver Beck were dismissed by the attorneys for Mr. Rust and that settlement of the matter was made between Aaacon's liability insurer and Mr. Rust's liability insurer on a negotiated settlement of the claim of the third parties only.

Bureau of Enforcement at Pages 234 and 238 of its brief of July 14, 1972 in this proceeding were presented verbatim to the Court. The Court per Judge Robert Ward rejected these arguments and upheld the validity of the arbitration provision as contained in Aaacon's bill of lading. A copy of the arguments of the Bureau of Enforcement as presented in the Mayer brief by Mayer's attorneys, and rejected by the United States District Court for the Southern District of New York are annexed hereto and made part hereof of Exhibit "2".

III

THE LEVY MATTER

On the 23rd day of May, 1972, Aaacon Auto Transport, Inc. moved before United States District Court for the Southern District of New York for an Order Compelling Arbitration of the claim of John D. Levy, Jr. and Lucy Levy against Aaacon Auto Transport, Inc. 72 Civ. 1703. In its motion papers Aaacon made clear to the Court that because the arbitration contained in Aaacon's bill of lading incorporated the rules of evidence of the State of New York and specifically CPLR 3117 (permitting the use of written documents where witnesses live more than 150 miles from the place of trial) no hardship would attend upon requiring the Levys to arbitrate. Attorney Petzall, who testified

APPENDIX

in the instant proceeding, submitted an affidavit setting forth his testimony before the Administrative Law Judge herein. The Court, per Judge Frankel, rejected the arguments of the Levys attacking arbitration and sustained the lawfulness and validity of the arbitration provision in question. See Exhibits "3" Thereafter on October 30, 1972, the Levys appealed the decision to the Second Court of Appeals. Said appeal was dismissed on March 5, 1973 and arbitration of the dispute has been commenced by the parties.

IV

THE SLATTERY MATTER

On July 6, 1972, your deponent received a letter from Wesley Sliter, Claim Representative from American State Insurance Company which is subrogated to the "claim of J. J. Slattery". Mr. Sliter was unaware of the investigation done by Aaacon of the alleged repairs on the Slattery vehicle and accordingly, threatened to commence litigation if the claim was not paid. On July 7, 1972 I set forth to Mr. Sliter all of the facts that our investigation had revealed including the fact that the Slattery vehicle was not repaired as represented and that the claim appeared to represent a case of gross misrepresentation by their subrogee J. J. Slattery. Said letters are annexed hereto and made a part hereof as Exhibits "5" and "4".

Upon settlement by Aaacon's liability insurance carrier and Rust's liability insurance carrier of the third party claim, all charges of fraud or wrong-doing or liability on the part of Aaacon and its driver Beck were dropped by the attorneys for Mr. Rust. The settlement was worked out between Aaacon's liability carrier and Rust's liability carrier without Aaacon's consent or control, and concerned only payment of the third party liability claim. Annexed hereto and made a part hereof as Exhibit "6" is a judgment in the Rust case from the attorneys for Rust dismissing all claims in that proceeding.

VI

SUPPORT FOR ARBITRATION

Annexed hereto as Exhibits "7" through "9" are news reports and articles showing the use of, and support for arbitration by the Better Business Bureau, Mobil Oil Company, Christian Science Monitor, and the Moving and Storage Industry of New York. These articles and reports demonstrate that arbitration is a "reasonable business practice".

VII

INHERENT DEFECTS

Annexed hereto is Exhibit "10" and made part

7/11/72

Judge [illegible]

U S District Court
Filed
Sep 21, 1972
S D of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

In the Matter of the Arbitration
of Certain Differences Between

AAACON AUTO TRANSPORT, INC.,

Petitioner,

-and-

JOHN D. LEVY, JR. and LUCY S. LEVY,

Respondents.

--x

72 Civ. 1703

ORDER COMPELLING
ARBITRATION PURSUANT
TO TITLE 9 U.S.C.4

The petitioner having moved this Court for an Order pursuant to Title 9 U. S. Code Section 4 directing that arbitration be compelled in the manner provided for in the agreement annexed to the moving papers herein, and said motion having regularly come on to be heard on the 23rd day of May, 1972,

NOW, upon reading and filing petitioner's notice of motion dated April 25, 1972, the petition of petitioner, AAACON AUTO TRANSPORT, INC., together with the exhibits annexed to said petition, including a copy of the agreement between the parties providing for the arbitration of disputes, said petition duly verified on the 25th day of April, 1972, by PAUL ZOLA, petitioner's Executive Vice President, the memorandum of law in support of said motion to compel arbitration, all submitted in support of petitioner's motion, and upon the letters of GORDON G. HARTWEGER, ESQ., dated May 10, 1972, May 27, 1972, May 31, 1972 and June 9, 1972 and upon the affidavit of GERHARD J. FETTALLI, ESQ., sworn to on the 27th day of May, 1972, all submitted in opposition to petitioner's motion, and this Court finding that petitioner and respondents entered into an agreement of transportation containing an arbitration clause which provided that any claims or controversies should be submitted to arbitration, and this Court further finding that the Court has jurisdiction of the proceeding brought herein as one arising under any Act of Congress regulating commerce pursuant to Title 28 U. S. Code Section 1337, and this Court further finding that the method of service of process by certified mail employed by petitioner to initiate the instant proceeding was proper, and this Court finding that respondents have refused to submit the dispute to arbitration and that petitioner is aggrieved thereby, it is

ORDERED that the respondents JOHN D. LEVY, JR. and LUCY S. LEVY are directed to arbitrate all claims against petitioner, said arbitration to be had in the City of New York, State of New York upon documents alone and in accordance with the provisions of the agreement between the parties, and respondents are directed to institute said arbitration within thirty days after service upon them of a certified copy of this order, and it is further

ORDERED that filing fees be paid initially by petitioner subject to the award of the arbitrators.

/s/ Marvin E. Frankel
U. S. D. J.

DATED: New York, New York
Sept 19, 1972

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2272

July 7, 1972

Mr. Wesley J. Sliter
Claims Representative
American States Insurance Co.
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Your Insured: John and Dorothy Slattery
Your Files: 769-953
C-072-754
Loss Date: 8-23-70

Dear Mr. Sliter:

Confirming our telephone conversation of this afternoon on the above captioned matter, I am enclosing copies of the Bill of Lading indicating the condition of the vehicle when received by us. This was filled out by Mrs. Slattery and the driver together.

I am enclosing also photographs of the alleged damaged condition at destination, and finally a statement by Daniel Griffin an adjuster, who indicates that the parts of the vehicle which were claimed to have been replaced were in fact only repaired.

In addition, I am sure you will want to note that the report of your adjuster (who you informed me is no longer with your company) indicates that Mr. Slattery sought to increase the claim by alleged tire damage which was apparently nothing more than worn tires to which the adjuster wrote on the report "front tires are worn out from misalignment. Ins. (insured) wants new tires, but I told ins. to go after Aaacon Auto Transport, Inc." This seems to be a case of an "unusual cooperation" between the Slatterys and the claims adjuster.

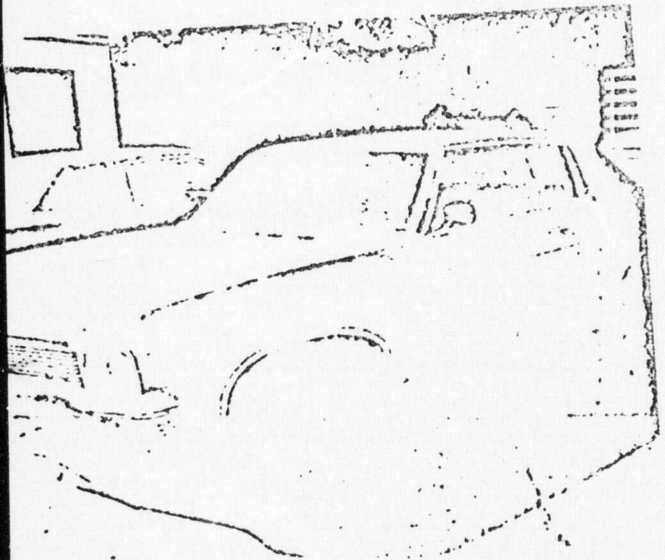
Please be assured of our fullest cooperation. We are awaiting further communication from you.

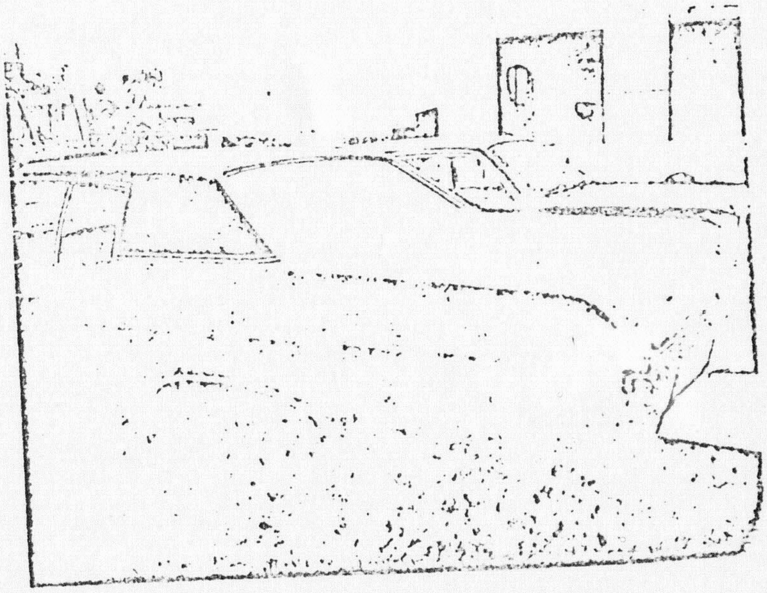
Very truly yours,

APPENDIX 1666

Ralph J. Zola
Executive Vice President

RJZ:mb
Encls.





APPENDIX 1667

A F F I D A V I T

On June 8, 1972, I accompanied Milton J. Guth to inspect the Slattery vehicle, a 1970 Impala. I found that the left front fender and the left rear quarter panel were repaired with synthetic plastic, which is commonly used in the repair of an auto panel. This material was used extensively in both panels. Whenever a panel is repaired, there are noticeable ripples in the polished finish, which is not found in a new panel. No new fenders were replaced on the vehicle. I have had 10 years in the auto body field, including 3 years of management.

Daniel J. Griffin
Daniel Griffin

Sworn to before me this 19 day of June, 1972.

ALGIS SIRVAITIS, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

APPENDIX 668

EXHIBIT "D"

726

PICK UP DATE	ESTIMATED DUE DATE	AAACON AUTO TRANSPORT, INC. E 9344
August 23, 1970	August 30, 1970	BILL OF LADING AGREEMENT

PICK UP CAR FROM:
Mr or Mrs John Slattery
St Mary's Hospital (Rm 507)
Hayes & Stanyan Streets
San Francisco, California
([illegible]) 7[illegible]-4000

CONSIGNEE:
Mr. John Slattery
1150 Homeland Drive
Rocky River, Ohio
(216) 333-73[illegible]

REGISTERED CAR OWNER (SHIPPER) DOROTHY K. SLATTERY REGISTERED ADDRESS 1150 Homeland Drive CITY & STATE Rocky River, Ohio

CAR MAKE Chevrolet TYPE Sedan MODEL DOORS 2 Doors LICENSE # [illegible] - Ohio

AUTOMATIC TRANS. Yes POWER BRAKES Yes POWER STEERING Yes SERIAL #

CONDITION REPORT — ✓GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER	✓	LF WINDOW	✓	TIRE JACK		ROOF		LUGGAGE IN TRUNK ONLY
FRONT BUMPER	✓	LF DOOR	✓	SPARE TIRE WHEEL		HUB CAPS	✓	3 Paper Bags
FRONT GRILLE	✓	L BODY SILL		R LIGHTS		RADIO	✓	1 Train Case
FRONT LIGHTS	✓	LR WINDOW	✓	RR PANEL	✓	HEATER	✓	1 Cooler.
HOOD	✓	LR DOOR	—	RR WINDOW	✓	UPHOLSTERY	✓	
WINDSHIELD		LR PANEL	✓	RR DOOR	✓	KEYS		
LF FENDER	D ✓	TRUNK LID	✓	R BODY SILL	✓	RR FENDER		
RF VENT WINDOW		R BUMPER	✓	RF WINDOW	✓	LR FENDER	D	
LF VENT WINDOW		R WINDOW	✓	RF DOOR	✓			

Shipper guarantees the operating and mechanical condition of the herein mentioned vehicle during transport, and assumes all responsibilities for damage and all liabilities arising therefrom. Regardless of cause, carrier shall not be liable for any damages or consequences from or for any delay in delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. Shipper agrees that driver is an independent contractor and that driver may make any necessary repairs to said vehicle of less than twenty dollars without shipper's consent and repairs in excess of twenty dollars with shipper's prior consent. Shipper shall pay for all said repairs. In the event of damage or loss to said vehicle, shipper shall retain all or part of driver's fee required to pay for same; or, if said damage or loss shall exceed driver's fee, shipper shall forward driver's fee, constituting final freight bill payment due, to carrier within seven days after said damage or loss occurs. Payment to driver by shipper or shipper's agent shall constitute conclusive evidence of satisfactory delivery of vehicle. Retention of driver's fee, at shipper's option, beyond said seven day period shall constitute conclusive evidence of full settlement and satisfaction of any claims against carrier by shipper and shipper's assigns. This Bill of Lading and any shipment hereunder shall not operate as a waiver or avoidance of any contract of indemnity which shipper effected prior hereto or the obligations thereunder which shall devolve primarily upon the indemnitor, and said contract of indemnity shall be and remain in full force and effect. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. All terms and conditions of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be invalid and void unless personally signed by and forwarded by the shipper to carrier. The shipper shall commence any legal action necessary to mitigate or recover damages from any third party responsible, or any source liable therefor. Any recovery by, or satisfaction of said damages to, shipper from any source liable or responsible to shipper therefor, shall, to the extent thereof operate and constitute a discharge and release of said claims against carrier by shipper and shipper's assigns. Driver alone shall be responsible for all violations of law during the time that the vehicle is in his possession. Driver and shipper consent to the personal jurisdiction of the courts of the State of New York and to service of process upon driver or shipper for the commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. This Bill of Lading agreement shall be deemed executed by the carrier at its principal office in New York City. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the performance or breach thereof, is non-assignable and shall be settled by arbitration in the City, County, and State of New York, provided however, that upon such arbitration the arbitrator(s) shall be bound by, and may not vary or modify, the provisions of this Bill of Lading agreement and shall, at the request of any party thereto, apply the rules and laws of evidence that would otherwise apply in a court of proper jurisdiction.

PICKED UP IN THE ABOVE CONDITION EXCEPT AS NOTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT X [illegible] Slattery	CONSIGNEE (SHIPPER'S AGENT) X
DRIVER Hayden Carl Jones	DRIVER RECEIVED FULL PAYMENT X
DATE August 23, 1970	DATE X

TOTAL PAYMENT DUE AT DESTINATION $ 50.00 ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION Mr. Hayden C. Jones
NAME XXXXXXXXXXXXXXXX 7215 Witherspoon
ADDRESS XXXXXXXXXXXXXXXXXX St.
CITY Pittsburgh, Penna.
PHONE (4[illegible]) 362-7609

AAACON AUTO TRANSPORT INC.
1055 Market St. — San Francisco, Calif.
431-0664

APPENDIX 1169

CAR OWNERS COPY

AMERICAN STATES INSURANCE

20713 CHAGRIN BOULEVARD • CLEVELAND, OHIO 44122 • PHONE (216) 295-1100

CLEVELAND, OHIO BRANCH

July 6, 1972

Mr. Ralph J. Zola
Executive Vice President
% AAAcon Auto Transport Inc.
147 West 42nd Street
New York, New York 10036

Re: Our Insured: John and Dorothy Slattery
Our Files: 769-953
C-072-754
Loss Date: 8-23-70

Dear Mr. Zola:

Reviewing our file, I note that your company and your representative here, Mr. Guth, have had more than a reasonable time to complete your file.

I have discussed the matter with our local counsel and if full reimbursement on our claims is not forthcoming within 20 days we shall proceed with appropriate legal action.

Are you a member of the Arbitration Association?

Very truly yours,

Wesley J. Sliter
Claims Representative
American States Insurance Co.

WJS:ke

cc: #C-072-754 Reg.

APPENDIX 1670

NORTH CAROLINA

BURKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
70 CvS 1210

Alda Lewis, Plaintiff versus William Nelson Bock; AAACON Auto Transport, Inc., of New York; and Ray Dean Rust, Defendants.	JUDGMENT

The above-captioned matter coming on for hearing before The Honorable Sam J. Ervin, III, Judge Presiding at this, the regular March 1973 Session of the Burke County Superior Court; and it appearing to the court after the call of the case for trial and during the proceeding of the matter the parties hereto through their counsel of record agreed to adjust, settle, and compromise all matters set forth in the pleadings or which could have been set forth in the pleadings arising out of an automobile collision which occurred on May 7, 1970 in Burke County, North Carolina;

By consent, it is, therefore, CONSIDERED, ORDERED AND ADJUDGED that the plaintiff, Alda Lewis, have and recover of the defendant, Ray Dean Rust, the sum of $10,500.00, and that said plaintiff have and recover of the defendant, AAACON Auto Transport, Inc., of New York, the sum of $21,000.00, or a total judgment in favor of the plaintiff, Alda Lewis, of $31.500.00, together with the costs of this action to be taxed by the Clerk.

It is further considered, ordered, and adjudged that all cross-actions filed by all parties in this cause shall be dismissed, with prejudice, with the exception of the cross-action of Ray Dean Rust for his property damages, and that he submits to a voluntary dismissal without prejudice as to such cause of action. The plaintiff submits to a voluntary dismissal, with prejudice, as to William Nelson Bock.

The costs of this action be and the same are hereby taxed one-third against the defendant Rust and two-thirds against the defendant AAACON Auto Transport, Inc., of New York.

This, the 12th day of March, 1973.

Sam J. Ervin III
JUDGE PRESIDING

BY CONSENT:

Alda Lewis
Alda Lewis, Plaintiff

DX 1171

EXHIBIT "C"

A brief statement of the evidence to be presented, an explanation of the non-cumulative nature of such evidence and an explanation of why such evidence was not previously adduced at the hearing as required by Rule 1100.101(b) is as follows:

I

THE LAFRAZIA MATTER

The affidavit of Ralph J.Zola dated October 26, 1973 sets forth the results of a trial of the claim of Joseph S. LaFrazia which claim was presented to the Administrative Law Judge in the instant proceeding, as well as the Court's ruling upon the validity and admissibility of certain oral testimony and documents sought to be submitted into the evidence.

a. The evidence in the affidavit of Ralph J. Zola with respect to the LaFrazia matter is not cumulative in effect, because the decision by the Court in the LaFrazia case for the first time demonstrates the invalidity of the LaFrazia claim; and for the first time gives a judicial ruling on the nature of the oral testimony and documents of the type submitted into evidence by the Bureau of Enforcement in the instant proceedings over the continuing objections of Aaacon Auto Transport, Inc. (I.C.C. Tr. 48)

b. The evidence could not have been presented prior hereto because the Court's decision has just been made into a transcription, which Aaacon recently received, parts of which are quoted herein.

Ralph Zola's affidavit notes that Aaacon, the defendant in the LaFrazia case, sought a trial of the matter, which the LaFrazias moved to obstruct. It further indicates the Court's finding of no liability on the part of Aaacon. Finally, and most importantly, it demonstrates clearly and in emphatic language that much of the evidence submitted in the instant proceedings by the Bureau of Enforcement over the continuing objections of petitioner Aaacon was incompetent, untrustworthy and inadmissible as unrelable hearsay. This type of evidence, including both hearsay oral testimony and hearsay documents, was repeatedly permitted in the instant proceedings in connection with the presentation of various shipper claims and should have been stricken.

II

THE SLATTERY MATTER

The affidavit of Ralph J. Zola enclosed herewith also sets forth the final resolution of litigation in the Slattery matter which was brought to the attention of the Administrative Law Judge and made a part of the record herein. In that case, attorneys for Slattery and American States Insurance Company, the insuror, both voluntarily dismissed their lawsuit against Aaacon after having been shown the type of evidence which Aaacon submitted in rebuttal in the instant proceedings. The dismissals of the Ohio litigation were final, with costs borne by Slattery and American States Insurance Company.

a. This evidence is not cumulative in nature because Aaacon is able to present the final results of the Slattery matter which had been in *media res* up to now.

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b. This evidence could not have been fully presented at the hearing held herein because it did not exist at that time.

III

AAACON'S VOLUNTARY CHANGES

The affidavit of Ralph J. Zola sets forth recent voluntary actions taken by Aaacon to make available an adjustor for claims where there is a dispute as to settlement. The affidavit notes that by law no carrier is obligated to take such a contract with an adjustment bureau which Aaacon has done to assist in the handling of claims.

a. The evidence with respect to this matter is not cumulative because it sets forth for the first time in this proceeding, the innovative change.

b. This evidence could not have been presented prior hereto because the practice and contract in question were recently entered into between Aaacon and General Adjustment Bureau.

CONCLUSION

In aiding the Commission in making proper determination of all of the issues in this very complicated proceeding, by having available all facts relevant to each and every specific issue raised therein, and in permitting the petitioners herein, Aaacon and Auto Trip USA, Inc. to defend their interests, it is respectfully submitted that the Commission ought to receive this evidence into the record.

Morton E. Kiel
Attorney for Petitioner
5 World Trade Building
New York, New York 10048

NOV 2 1973

ruled on the evidence submitted by the LaFrazias in that proceeding, including documents and oral testimony precisely similar to that which was submitted by the Bureau of Enforcement in the LaFrazia matter and other matters before the Administrative Law Judge.

4. Judge Kassal repeatedly held such evidence to be inadmissible, unreliable and unacceptable.

5. Thus, during the course of the trial, Judge Kassal held that Mr. LaFrazia's testimony concerning the condition of the vehicle in California was incompetent and inadmissible hearsay:

> "Q. Mr. LaFrazia, do you have your own personal knowledge, that is to say, you know yourself how the car was driven?
>
> A. What do you mean, how it was driven?
>
> Q. How the car was driven in California?
>
> A. My cousin used to go to work.
>
> Q. But you don't know that personally?
>
> A. That is what he uses it for.
>
> Q. How do you know that personally?
>
> A. That is what he uses it for.
>
> Q. How do you know that personally; but you didn't see him operate it?
>
> A. When I was in California I was there and I saw him doing work with the Korvette.
>
> Q. And after you left California, did you see him operate it?
>
> A. No.

DX 1175

"Q. And you didn't see the driver for Aaacon, the alleged driver for Aaacon operate the vehicle, did you?

A. No.

Q. And you have no personal knowledge as to how he operated it?

A. Well, the Korvette's drive like a madman.

Q. You are going to be responsive--

THE COURT: One second please. The answer was no. It raises a question of fact for the jury. You will disregard it. One can only testify about that which he himself has personal knowledge. That you are told by someone else may be perfectly natural. The fact that you communicated with someone else, is perfectly natural. All you can be cross examined on is what (you) did or did not do to your own knowledge.

That is why we are so strict about hearsay, that which someone else tells you. So other than what you were told, if it is for purposes of proving the facts which the other person told you, he is the only one that can be cross examined.

Since he is not here I have sustained the objection." (Tr. 82, 83. 84) (Emphasis added.)

6. Further, Judge Kassal rejected Mr. LaFrazia' attorney's attempt to submit into evidence invoices and bills from the West Coast which were held to be inadmissible, incompetent and untrustworthy as evidence, stating:

"MR. STAFFORD (counsel for LaFrazia): Your Honor, with regard to the specific questions of damages at the time of the accident I will offer into evidence an invoice with regard to this car (t)endered to the plaintiff to drive, Aaacon Auto Transport, Inc. agents.

> "THE COURT: It is all double hearsay, and I say for the same reason that the invoice can't be cross examined. That would be a very interesting way and novel way of trying cases in our system of jurisprudence." (Tr. 30, 31)
>
> * * *
>
> "THE COURT: Once again when the invoices are represented by the people who made the invoices you will have competent testimony. He wouldn't by invoices. It is all hearsay. This is completely contrary to what the hearsay rule says. As you can see at this point, there is no opportunity to examine documents unless they fall into hearsay exception and you must understand there are sound rules for it. If you were on the other end of this case you would certainly like to have the opportunity to cross examine testimony that is very definitely prejudicial to you." (Tr. 35, 36) (Emphasis added.)

7. As to Mr. LaFrazia's testimony concerning his alleged conversation with "experts" and what they told him, the Court held that this type of evidence was also inadmissible, incompetent and untrustworthy:

> "Q. Did you receive a phone call from an officer of Korvette Enterprises of California?
>
> MR. ZOLA: I object on the grounds of hearsay and also on the grounds of irrelevance.
>
> Q. Do you have any basis whatsoever for believing that while your car was out in California and after it was turned over to Aaacon it was damaged?
>
> MR. ZOLA: Objection, unless he knows.
>
> THE COURT: I will sustain it unless he can speak of his own personal knowledge. The objection is sustained. If he has personal knowledge it is admissible and permitted.
>
> Q. Please tell the Court and Jury of your own personal knowledge if you have any whether or not your Korvette sustained any damage while it was in Aaacon's custody?

"A. Yes. I received a phone call from California.

MR. ZOLA: Objection.

THE COURT: Objection sustained. Not by phone calls but by your own personal knowledge.

A. Well, I sent out quite a bit of money to my cousin out to California, and it had to be my car.

THE COURT: That is a conclusion, but you don't know this to be a matter of your own personal knowledge.

THE WITNESS: Well, it was Korvette Enterprises.

THE COURT: It has noting to do with the issues in this case unless someone can tell me of your own knowledge as to how the vehicle got here to you from California." (Tr. 77, 78)(Emphasis added.)

8. Finally, the Court held that Mr. LaFrazia was not an "expert" and could not testify as to either the cause, costs or the extent of the alleged damage. In this regard, the Court questioned Mr. LaFrazia itself:

"THE COURT: Have you ever been in the business of repairing automobiles or selling automobiles or selling auto parts?

THE WITNESS: No sir.

THE COURT: Have you any experience with cars in terms of values other than the usual car owner would have?

THE WITNESS: No.

THE COURT: O. K. He is not an expert unless you can show me herein he is.

THE WITNESS: I have owned 5 or 10 cars. I am not an expert.

"THE COURT: Gentlemen, come up here please.

Whereupon there was a conference at the Bench with the attorneys.

THE COURT: Would you kindly take the jury out. I am sorry. They are legal discussions and they don't concern the jury.

Whereupon the jury filed out.

THE COURT: At this point I have had a conference with the attorneys and I have excluded the jury.

It appears that this witness cannot give me testimony with regard to damages or to the value of the vehicle prior to its having been entrusted to Aaacon. Do you propose to bring a witness Mr. Stafford whom we can ask?

MR. STAFFORD: I propose to bring in Mr. A. J. Kulinski, the President of Soundview Chevrolet in New Rochelle.

THE COURT: Well what will he testify to?

MR. STAFFORD: He will testify to first as to its fair and reasonable market value of the Korvette in 1969.

THE COURT: Will we have someone here who can describe the condition of the alleged bailment; we are not talking about Korvettes. We are talking about this Korvette on this case and what else, whether he testifies after that--could he testify as to his observation of the car after it came to his custody when it was delivered by rail to New York and required an additional $800.00 worth of repairs plus whether he on that basis would be able to testify as to its condition or whether anybody would be able to testify as to its condition after the alleged accident or whatever it might have been.

MR. STAFFORD: Yes, Your Honor--

THE COURT: Pardon me, did you not tell me that there was an interval where this vehicle was transported by train to him--all he can testify is to whether its condition at the time he saw it.

> "MR. STAFFORD: Your Honor, he will testify *hypothetically based on the invoice supplied by the Chevrolet dealer in California.*
>
> THE COURT: *That will be inadmissible. It is hearsay. If you can tell me how (Aaacon) will be permitted to cross examine that, I will permit you to put it in.*" (Tr. 21, 22, 23, 24) (Emphasis added.)

9. This case was decided in favor of Aaacon, the Court holding that Aaacon was not liable to the LaFrazias for one penny of damages.

10. Upon information and belief that in view of this decision it cannot be said that Aaacon was unreasonable in its denial of the LaFrazia's claim.

II

THE SLATTERY MATTER

11. Prior hereto Aaacon has sought to reopen the record concerning the Slattery claim. As has been previously noted, the Slattery's and their insurance company commenced litigation against Aaacon in the Ohio State courts.

12. However, Mr. Slattery's personal attorneys, as well as others for the *insurance company which paid Mr. Slattery*, have withdrawn their claims and released Aaacon after they had commenced litigation against Aaacon in Ohio.

13. Said withdrawal followed the submission to Mr. Slattery's attorneys by Aaacon, of the same documents

submitted by Aaacon in the instant proceeding, indicating misrepresentation on the part of claimants. Annexed hereto as Exhibit "A" is a letter dated October 4, 1973 from William M. Nelson, Jr., Esq., personal attorney for Dorothy and John Slattery withdrawing the claims in full, along with the release of Aaacon by the Slatterys and their insurer (without cost to Aaacon and without Aaacon paying any part of their alleged "claim").

14. Thus, the lawsuit in question commenced by the Slatterys' insurance company in Ohio Courts was dismissed after Aaacon raised and demonstrated the true facts and circumstances of the claim by John Slattery and American States Insurance Co. Mr. Slattery's attorney received from Aaacon and other sources documents, including:

a. The affidavit of Daniel Griffin, indicating misrepresentation as to the alleged repairs to the Slattery vehicle by Mr. Slattery.

b. The letter to Slattery dated December 8, 1970 from Aaacon, which Mr. Slattery wrongfully denied receiving.

c. The photographs of the alleged "damage" showing excellent condition of the vehicle.

d. The statement by American States Insurance Co., advising that the tires were worn due to misalignment, but that they could "go after Aaacon"; and

e. A copy of testimony of Ralph Zola before the Interstate Commerce Commission -- setting forth Aaacon's handling of this matter.

These documents and testimony, most of which were unknown to Mr. Slattery's attorney at the time he commenced litigation in Ohio, were submitted as evidence in the instant proceeding by Aaacon.

III

AAACON's VOLUNTARY CHANGES

15. Although Aaacon is not bound by law to do so, in a further attempt to ameliorate misunderstandings with respect to claims settlement procedures, Aaacon has entered into an agreement with General Adjustment Bureau, a well-reputed independent claims adjustment service, which maintains over 700 offices throughout the United States, to investigate claims presented by individual shippers where disputes arise as to the settlement thereof. While the Interstate Commerce Act imposes no obligation upon Aaacon or any carrier to bear this additional expense, Aaacon has voluntarily made this expensive and time-consuming addition to its claims procedures.

Ralph J. Zola

Sworn to before me this
26th day of October, 1973

Michael G. Ames

MICHAEL G. AMES
Notary Public, State of New York
No. [illegible]
Qualified in New York County
Commission Expires [illegible]

APPENDIX [illegible]

Squire, Sanders & Dempsey
Counsellors at Law
1800 Union Commerce Building
Cleveland, Ohio 44115

Cable Squiresand
TWX 810 421 8116
Area Code 216
696-9200
Washington, D.C. O
21 Dupont Circle, N
Washington, D.C. 2

October 4, 1973

Mr. Ralph J. Zola
Executive Vice President
AAAcon Auto Transport, Inc.
230 West 41 Street
New York, New York 10036

Re: Dorothy M. Slattery, et al -vs- AAAcon Auto Transport, Inc.

Dear Mr. Zola:

I have reviewed the enclosures attached to your letter of September 11, 1973 some of which I had not previously seen, and in light thereof have recommended to our clients, Mr. and Mrs. Slattery, that their action in Common Pleas Court of Cuyahoga County, Ohio, Case Number 913,411 be dismissed, and they have agreed. Their liability carrier, American States Insurance Company, concurs in this disposition of the case and are preparing an appropriate Judgment Entry dismissing the entire case, with prejudice, at Plaintiffs' costs together with mutual Releases.

If the foregoing meets with your approval sign and return the Judgment Entry and Releases. We will complete them promptly, file the Judgment Entry in the Court and return fully executed copies to you for your file.

Sincerely yours,

Wm. M. Nelson

William M. Nelson, Jr.

WMN:cds
CC: Milton J. Guth, Esquire

EXHIBIT "A-1"

APPENDIX

shipping but for which they are responsible under Federal law. Aaacon has a right to demonstrate this fact by showing recently discovered evidence that there has been concerted action on the part of certain auto manufacturers to hide from the public, defects in automobiles. Additionally, recent reports show that the manufacturers often do not repair recall defects free of charge even when they are discovered and that, accordingly, many car owners do not correct these inherent defects. The scope of these defects is monumental and their effect on the nature of the claims in question certainly relevant.

Errors of the Administrative Law Judge Concerning Insurance

The Bureau of Enforcement seeks to ignore the confusion and error contained in the Administrative Law Judge's decision concerning the insurance Aaacon provides.

Aaacon will not repeat the detailed analysis of the evidence presented in its Brief of January 28, 1974. It merely wishes to summarize and briefly consider the following few salient points:

1. The insurance undertakings obtained by Aaacon on behalf of the public, required by Federal law, and filed by Aaacon with the Interstate Commerce Commission under BMC 32 and BMC 90 contain no deductible provisions. Moreover, they create a separate cause of action at law for the shipping public directly against Aaacon's insurance companies for their entire claim with no deductions.

DX

2. Aaacon provides $3,000,000.00 of liability insurance for bodily injury and property damage without any deductible whatsoever.

3. No findings of any kind regarding a deductible provision were made by the Administrative Law Judge concerning the insurance provisions which Aaacon has obtained for cargo damage.

4. The Administrative Law Judge erred regarding Aaacon's bond. He omitted practically all of the evidence presented by Aaacon. The fact of the matter is that while a bond is not required under Federal law or by regulation of the Commission, Aaacon voluntarily provides it as an extra measure of coverage to the public. Aaacon presented full descriptive testimony and documentation concerning its bond. No objection to the receipt of this testimony and documentary evidence was ever made by the Bureau. The evidence is properly in the Record.

Considering these matters more fully, the Administrative Law Judge's grievous and negligent review of the insurance provisions, policies, bonds and filings provided by Aaacon, is deliberately down-played by the Bureau which attempts to devine an unstated "purpose" in the Administrative Law Judge's erroneous discourse.

The Bureau admits in its Reply Brief (p. 33):

> "...deductible provisions in cargo policies are common and this is a matter between carrier and its insurance carrier."

This is absolutely correct. Moreover, the BMC endorsements are not permitted to have, and do not have, deductible provisions to effect liability to the shipping public which is accident on the grounds of mechanical failure and the second accident on the grounds of an act of God. It is further clear that not only Aaacon, but the actual party making payment for the repair, Reliance Insurance Company, concurs in the view that the first accident was not Aaacon's responsibility.

COGGINS CLAIM

Other matters which have occurred subsequent to the hearing and which are relevant, include the fact that Aaacon has dismissed the agent in Atlanta responsible for the transportation of Coggins' vehicle. At page 218 of the Bureau of Enforcement's brief, the Bureau apparently deemed it inappropriate for Aaacon to continue the employment of its agent in Atlanta. The agent in question was dismissed prior to Aaacon's receiving the brief of the Bureau of Enforcement. If the Bureau of Enforcement deems that it has the authority and/or the expertise to determine that this agent should be fired, it will be happy to know that its demands have been met.

INSURANCE COVERAGE

Another fact that has come into existence subsequent to the course of the hearing and the printing of the briefs herein

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-C-7287
AAACON AUTO TRANSPORT, INC. - INVESTIGATION AND REVOCATION OF CERTIFICATE

DOCKET NO. MC-C-7287 SUB NO. 1
AAACON AUTO TRANSPORT, INC., PETITION FOR DECLARATORY ORDER

DOCKET NO. FF-359
AUTO TRIP USA, INC. FREIGHT FORWARDER APPLICATION

PETITION OF AAACON AUTO TRANSPORT, INC., AND AUTO TRIP USA, INC. TO REOPEN THE RECORD PURSUANT TO RULE 1100.101(b) OF THE COMMISSION'S RULES OF PRACTICE FOR THE RECEIPT OF FURTHER EVIDENCE

Comes now Aaacon Auto Transport, Inc. and Auto Trip, USA, Inc., hereinafter referred to as "Aaacon or Auto Trip" respectively, or collectively as "Petitioners", and submits this petition respectively requesting that the Interstate Commerce Commission reopen the record in the above-captioned proceeding solely for the purpose of receiving in evidence certain material which arose subsequent to both the close of the hearings herein and the submission of Aaacon's prior petitions to reopen the record.

LAW AND ARGUMENT

This petition, made pursuant to Rule 1100.101(b) of the Commission's Rules of Practice, is submitted in order not to burden the Commission and Administrative Law Judge with the time and expense required to hold additional public hearings. Petitioner has submitted additional evidence in affidavit and documentary form pursuant to the modified procedure provisions of the Rules of Practice. Petitioner is ready and willing to engage in further hearings at the Commission's discretion.

Evidence discovered subsequent to the close of a proceeding before the Interstate Commerce Commission provides adquate grounds for the reopening of such proceeding. Thus, the Commission ought not to deny reopening where newly discovered evidence is to be presented. Tidewater Express Line v. U.S., 278 F. Supp 561 (DC Maryland 1968); Midwest Emery Freight System v. U.S., 295 F. Supp. 112 (DC Illinois 1968); Garett Freightlines v. U.S., 305 F. Supp. 149 (DC Idaho 1969); Carolina Freight Carriers v. U.S, 307 F. Supp 723 (DC North Carolina 1969). Moreover, the Commission itself has held that it should consider new developments occurring subsequent to the close of a hearing. Burnett 88 MCC 452.

Consistency of application of administrative rulings requires that this petition to reopen these proceedings be granted. Dixie Highway Express v. U.S., 268 F. Supp 239 (DC Mississippi 1967).

Aaacon has heretofore asserted, through witnesses during the oral hearings in this proceeding, as well as in its written submissions, that many of the claims practices which the Bureau of Enforcement sought to attribute to Aaacon were in fact not done by Aaacon, but rather were the acts of Aaacon's insurer, beyond the control of Aaacon. This resulted from the fact that Aaacon could not, under the terms of the insurance policy issued by its insurer, undertake voluntarily to settle or litigate the matters submitted to the insurer.

Recently discovered evidence, not heretofore available to Aaacon, corroborates Aaacon's position and proves conclusively that Aaacon's insurer, the Home Indemnity Co. (hereinafter sometimes "Home") secretly acted in a wrongful manner, both breaching its insurance agreement with Aaacon and violating its duty to defend Aaacon and Aaacon's customers. The evidence further shows that these actions of Home were opposed by Aaacon and Aaacon's personnel. Aaacon respectfully submits that the actions of the Home Indemnity Co. may not at law, and should not be, attributed to Aaacon.

Second, a great length of time has elapsed between the time the claims cases presented by the Bureau of Enforcement in these proceedings arose and the present. In the interim, the claims practices of Aaacon have been altered pursuant to the orders of the Commission issued under Ex Parte 263, 340 ICC 515 (1972). It is therefore necessary and appropriate that the Commission have before it the practices of Aaacon for the past two and one-half years. Inasmuch as the Commission is being asked to issue cease and desist orders, such orders are not appropriate where the practices in question are not currently followed by the carrier.

To exclude evidence on these two issues would be to rely upon a partial presentation of the facts of any given case. The justice or reasonableness of any given claims practice with respect to a particular case can only be understood in light of the presentation of the entire case.

Commission Practice Rule 1100.101(b) states:

> "When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

A brief statement of the evidence to be presented, an explanation of the non-cumulative nature of such evidence, and an explanation of why such evidence was not previously adduced at the hearing, as required by Rule 1100.101(b), is as follows:

1) Insurance:

At page 14 of the decision of the Administrative Law Judge dated November 30, 1973, and continuing on page 15, the following paragraphs appear:

> "It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from policies which negate its common carrier responsibility for the property in its possession for transportation, including the assumption of liability for the full, actual loss or damage to that property, as required by sections 219 and 20(11).
>
> "It is further ordered, That the respondent be, and it is hereby, notified and required

> the respondent make and keep detailed records of the results of such investigation.
>
> "It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from arbitrarily denying claims when the facts available to it are inconsistent with denial.
>
> "It is further ordered, That the respondent be and it is hereby, notified and required to cease and desist from attempting to impose responsibility on its shippers' insurance carriers for loss of or damage to property it receives for transportation.
>
> "It is further ordered, that respondent be, and it is hereby, notified and required to cease and desist from advertising that it insures for liability in any amount unless it discloses to prospective shippers the precise kind and type of insurance carried, including deductible amounts, or that it bonds its drivers, unless it is made clear what type of bond is provided and the kind and manner of protection to its shippers."

It is the position of Aaacon that these above-quoted paragraphs were based upon a mistaken reading of the record by the Administrative Law Judge, and more importantly, upon assumptions that the recently discovered evidence proves to be erroneous. The record is clear, that in these proceedings Aaacon, at all times, asserted that it was at the mercy of its insurer, the Home Indemnity Co. for the defense and settlement of the claims because, under the insurance policy issued by Home, Aaacon was not able to voluntarily settle or defend the cases handled by Home. The Home policy had no deductible and Aaacon could not make any settlement thereunder.

As noted in its prior petitions to reopen these proceedings, Aaacon began litigation against Home Indemnity in order to have Home account for its failure with respect to providing coverage to the public in the manner required by Aaacon's policy of insurance and the Interstate Commerce Act. These proceedings against Home have continued to a point preliminary to the examination before trial of the Home Insurance Co.

Attached hereto is an affidavit of attorney Richard S. Birnbaum, which sets forth certain facts concerning documents made known to Aaacon for the first time in the course of pre-trial discovery which proves a covert scheme on the part of Home, to which Aaacon was neither privy nor a party, to defraud the public by failing to pay claims against Aaacon, for which Aaacon had obtained insurance coverage pursuant to the requirements of the Interstate Commerce Act and the Commission.

This evidence is relevant because it demonstrates clearly and without equivocation that, insofar as any improper actions were taken with respect to the failure in properly covering claims made by the public against Aaacon, it was the willful and conscious actions of Aaacon's insurer, Home Indemnity Co., taken against the express wishes and active opposition of Aaacon, which inured to the detriment of the public. These documents constitute admissions in writing, by personnel of Home Indemnity Co., of wrongful acts.

To base any negative judgment against Aaacon upon the acts of its insurance company would represent the highest degree of injustice and should not be countenanced or condoned by this Commission.

The evidence herein is not cumulative in nature because it sets forth, for the first time in these proceedings, evidentiary facts which exonerate Aaacon from the charges which were brought against it, and lay the blame squarely where it belongs, upon the shoulders of the Home Indemnity Co. This evidence could not have been presented prior hereto because Aaacon just recently obtained knowledge of the existence of these documents during the course of the preliminary discussions of its examination before trial of the Home Indemnity Co. Moreover, the Home Indemnity Co. has refused to voluntarily turn these documents over to Aaacon, which has now sought a court order to obtain them so that they might be available in these proceedings.

Aaacon will supply the Commission with copies of the actual documents after receiving same from the Home Indemnity Co. pursuant to the orders of the New York State Supreme Court in the case of Aaacon Auto Transport, Inc. v. Home Indemnity Co., Index No. 23486-72

However, Aaacon feels it is vital to bring to the Commission's attention the existence of these documents as well as quotations therefrom which were recorded by Aaacon's counsel. These documents demonstrate that in the cases presented by the Bureau of Enforcement, the wrongful acts of Aaacon's insurer, which acts were opposed by Aaacon, were responsible for the failure of insurance coverage alleged by the Bureau of Enforcement.

2) Claims handling procedure:

The affidavit of Jerome Moser dated November 5, 1974 sets forth the fact that during a period extending from the present back more than two years, Aaacon has substantially reduced both the number of claims and the dollar amount of claims by the public for cargo loss and damage. The affidavit further demonstrates that this reduction in claims was effected in a period in which Aaacon increased its traffic by approximately 23%.

The affidavit also shows that the time for answering and settling claims has been reduced tremendously.

Additionally, the affidavit indicates that no trade or generic names are currently in use by Aaacon's Claims Department in connection with the handling of cargo loss and damage claims from the public.

This evidence is relevant to the proceedings herein, because it demonstrates Aaacon's efforts, and the results thereof, to reduce its cargo loss and damage claims, thus rendering moot many of the issues surrounding Aaacon's claim handling procedure and its operation in general. The evidence is not cumulative in effect because it represents the first presentation by Aaacon of the current status of its claim handling procedure and the results thereof.

The Commission may note the fact that the evidence presented by the Bureau of Enforcement in hearings which ended on March 31, 1972 was, in almost all instances, more than two years old at the time of the hearing. Thus, without the evidence here submitted, the Commission would be in the position of making judgment concerning Aaacon's current claims procedure and issuing orders based upon evidence which is at least five or six years old.

The evidence here summarized could not have been presented prior to this motion because the comparison made in Mr. Moser's affidavit were based on facts which occurred during the period immediately prior to the filing of this motion.

CONCLUSION

In aiding the Commission in making a proper determination of all of the issues in this complicated proceeding by having available all of the facts relevant to each and every specific issue raised therein, and in permitting the petitioners herein, Aaacon and Auto Trip, USA, Inc. to defend their interest, it is respectfully submitted that the Commission ought to receive this evidence into the record. Alternatively, the petitioners herein respectfully request that the Commission order further hearings at which time Aaacon be permitted to present witnesses and additional evidence concerning the matters referred to herein, and that prior to the new hearing date, the Commission issue subpoenas for the pertinent records of the Home Indemnity Co.

Respectfully submitted,
Morton E. Kiel
MORTON E. KIEL
Suite 6193
5 World Trade Center
New York, New York 10048

Practitioner for Aaacon Auto Transport, Inc.
and Auto Trip USA, Inc.

Dated at New York, New York
this 14th Day of January, 1975

[illegible] 1696

State of New York)
County of New York) ss.:

RICHARD S. BIRNBAUM, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the highest courts of the State of New York.

2. I make this affidavit in support of the motion of Aaacon Auto Transport, Inc. and Auto Trip, USA, Inc., to reopen the record in Docket MC-C-7287 Sub No. 1 and FF-359 respectively.

3. I am fully familiar with the facts and circumstances surrounding the litigation between Aaacon Auto Transport, Inc. and its insurer, the Home Indemnity Company, which is being had in the Supreme Court of the State of New York, Index No. 23486-72.

4. In that litigation, Aaacon has asserted, as it has before the Interstate Commerce Commission in the current Investigation and Revocation proceedings, that the actions of the insurer, Home Indemnity Company (hereinafter sometimes "Home") were beyond the control of Aaacon and in violation of the insurance policy issued to Aaacon. The actions of Home have in most instances formed the basis of the accusations against Aaacon made by the Bureau of Enforcement herein concerning insur-

ance coverage and settlement of claims.

5. It is Aaacon's contention in the State Court litigation that the Home Indemnity Company did acts in violation of law and in violation of its insurance policy with Aaacon -- acts which Aaacon emphatically opposed -- by which the Home Indemnity Company failed to provide insurance coverage and proper defense to the owners of vehicles being transported by Aaacon.

6. On November 19, 1974 I was present at a preliminary and pretrial discovery procedure in which documents of the Home Indemnity Company were first made available to Aaacon. These documents contain written admissions of wrongdoing by Home. The following excerpts from the documents are submitted to show their relevance. The actual documents will be submitted to the Commission when given to Aaacon pursuant to court order. All of the foregoing documents were recorded in my presence and the contents thereof represents the contents of the documents which we will subsequently make available to the Commission at the first practicable date.

7. Of the cases presented by the Bureau of Enforcement in these proceedings, only two of the files from Home Indemnity Company has so far been made available to us. These are in the Rust matter and the Levy matter. The following quotations from these files show that in these matters Aaacon sought to have the Home Indemnity Company defend Aaacon's customers as the primary insurer pursuant to the policy of insurance which the Home Indemnity Company issued to Aaacon, but that the Home

Indemnity Company wrongfully resisted.

8. Thus, for example, the files of the Home Indemnity Company which I have examined in the Rust case include a memorandum from a Home Indemnity employee, Mr. Daniel Golden, dated December 5, 1972 stating inter alia: ✓

> "...remind our counsel that (Ralph J.) Zola (an officer of Aaacon) will take any position designed to have Home be the primary carrier,..."

The foregoing memorandum clearly demonstrates, as Aaacon has asserted in these proceedings, Aaacon sought to have the Home Indemnity Company be primarily responsible for the vehicles Aaacon transported.

9. Another example is a two-page letter signed by attorney Stephen M. Thomas for the Home Indemnity Company dated November 7, 1972 which corroborates the assertion by witness Ralph J. Zola in these proceedings, that affidavits containing wrongful information were prepared by the Home Indemnity Company for his signature as an officer of Aaacon and that he refused to execute same. The letter states inter alia that a letter of Ralph J. Zola of October 5th contained a refusal:

> "...to sign the answers we prepared." /

The attorney's letter goes on to note that although the Home Indemnity Company refused to defend for the acts of the driver

Beck, that this refusal was in violation of their counsel's interpretation of the case:

> "If that is in fact the way your policy with Aaacon was worded, there seems little reasonable argument that Beck was an insured by that policy."

The foregoing clearly demonstrates that in the Rust case Aaacon took the position with its insurer, the Home Indemnity Company, that the Home and Aaacon were responsible to indemnify for the driver Beck, and that Ralph Zola had so asserted to the Home Indemnity Company and that their attorney Steven M. Thomas, agreed with the position of Zola.

10. This is further corroborated by a telegram sent from the Charlotte, North Carolina office manager of the Home Indemnity Company to its main office in New York indicating "we have no defense". Despite this, the Home Indemnity Company refused to settle the matter prior to trial.

11. Finally, in a letter dated March 9, 1973, attorney Patrick for the Home Indemnity Company wrote that it was the policy of the Home Indemnity Company to create "confusion in hope that the liability carrier covering the vehicle being transported (in this case the Rust vehicle) might contribute something towards the settlement of the case." These quoted admissions contained in documentary evidence which Aaacon has made a motion to obtain so that it may be presented by the Commission, clearly support Aaacon's position that the Home Indemnity Company in violation of its obligations under law

and in opposition to the position of Aaacon, refused to indemnify the public -- acts for which Aaacon has been wrongly accused by the Bureau of Enforcement.

12. Another example of the wrongful acts of the Home Indemnity Company which have been attributed to Aaacon are contained in the Home Indemnity files on the Levy case which I have seen. Therein, in a memorandum dated January 12, 1970, two of the officers of the Home Indemnity Company stated that they were unaware that Aaacon was an ICC licensed carrier -- this despite the fact that the Home Indemnity Company had issued BMC 90 endorsement to its insurance policy. The memorandum goes on to state:

> "...as far as the vehicle, we have refused to post a bond. This decision was made prior to our knowledge that our insured was working under an ICC permit. The vehicle is being transported under our ICC permit and our insured is receiving a benefit from its operation, I feel, we will be held responsible to post a bond. Firemen's Fund has denied any liability in coverage to our operator. To eliminate unnecessary litigation, I feel we should step in, do what is necessary in South Carolina to release the vehicle and handle the case on its merits."

13. Despite this memorandum, the Home Indemnity Company refused to post a bond and refused to indemnify the Levys. It is clear from the foregoing language that although the Home Indemnity Company was aware of its obligations under its insurance policy issued to Aaacon and the BMC 90 endorsement, it failed to live up to them. Any doubt that the actions of the Home Indemnity Company were a continuing and deliberate coverup

can be set aside by a subsequent memorandum dated August 21, 1970 in which the employees of Home Indemnity stated:

> "Our insured comes under ICC regulation, one of which is that our insured must have a representative in each state to accept service of summonses. Please do not bring up the question of squashing service and just go ahead and put in a defense for the named insured, Aaacon Auto Transport, Inc. only. Under no circumstances are you to do anything on this file without our prior approval. We take a hard line on these cases and these files are being handled by Home Office as well as being looked at by the New York State Insurance Department and the Interstate Commerce Commission."

14. This is further confirmed by a letter from the attorney for the Home Indemnity Company, Mr. Kleinschmidt, to the client in which he stated:

> "...by reason of endorsement #1, it would seem clear that the policy would cover the insured's property damage liability with respect to the automobile involved. Further, by this same line of reasoning, if claim had been made against the insured, or its (independent-contractor) driver, arising out of the South Carolina accident involving either bodily injury or property damage, it would be my feeling that the policy would require, under Insuring Agreement II, that the company:
>
> > '(a) defend any suit against the insured alleging such injury, sickness, disease or distruction and seeking damages on account thereof...'
>
> "Consequently, under this analysis it would appear to me that the company's liability would be for the bond premium, $30."

15. The foregoing clearly demonstrate in the only two relevant case files which we have so far been able to see,

the actions of the Home Indemnity Company, Aaacon's insurer, had without the knowledge, participation or consent of Aaacon (and in fact opposed by Aaacon) were unlawful and in violation of the advice of counsel to the insurance company. Clearly it would be a miscarriage of justice for Aaacon to be accused or held responsible for these actions.

16. The foregoing is submitted at this time because, although recently discovered, it is felt that the information and corroboration contained therein is of vital significance to these proceedings and that while your deponent has every intent of obtaining and turning over to the Commission actual documents containing these statements, it is necessary to bring to the Commission's immediate attention the contents thereof.

17. Accordingly, your deponent believes that for the Commission to have a full picture of the claims procedures of Aaacon and its acts as well as a clearer picture of the responsibility for any wrongful acts done in particular cases, it is necessary that the Commission receive this additional evidence and if appropriate, reopen these proceedings by oral testimony and subpoena the records of the Home Indemnity Company to set forth the full facts.

WHEREFORE, your deponent respectfully prays that Aaacon's petition to reopen the record be in all respects granted.

Richard S. Bir

Richard S. Birnbaum

Sworn to before me this
12th day of January, 1975

ALBERT D. LEFKOWITZ
Notary Public, State of New York
No. 41-4500154
Qualified in Queens County
Commission Expires March 30, 1977

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JEROME MOSER, being duly sworn deposes and says:

I am the National Claims Manager for Aaacon Auto Transport, Inc. and have been since October 12, 1972.

I am familiar with Tariff MF ICC No. 9 issued August 21, 1972 and effective September 25, 1972. I am also responsible for the maintenance of all claims, records and the providing of claims information for Commission Quarterly Reports.

I can therefore state that, based upon my investigation of Pre-Tariff and Post-Tariff Operations, both the number of claims outstanding as well as the average amount per claim have been reduced substantially.

At the end of the second quarter of 1972, prior to the institution of the Claims Tariff, there were 365 open claims totalling $129,069.00 -- an average of $354,00 per claim. At the end of the third quarter of 1972, six days after the tariff became effective, there were 302 claims outstanding totalling $111,994.00 -- an average of $371.00 per claim.

The institution of HF TCC No. 9 brought dramatic changes over a two-year period. At the end of the second quarter of 1974, there were 118 claims open totalling $20,061.00 --- an average of $170.00 per claim -- thus showing a reduction in the period July 1, 1972 to July 1, 1974 of 68% in the number of claims and 54% in the average amount per claim. Moreover, at the end of the third quarter of 1974, there were 106 claims open totalling $16,210.00 -- an average of $163.00 per claim. Contrasting these figures with those of the end of the third quarter of 1972, reveals a reduction of 65% in the number of claims and a 56% reduction in the average amount of a claim.

Additionally, where there were 206 claims of 120 days or over undisposed of as of July 1, 1972 -- today there are none.

Another recent change in the claims procedure is that there are no longer any trade or generic names utilized and that all claims personnel are instructed to give their own names freely.

At the same time, Aascon's transportation volume has increased from 1,451 cars shipped in July of 1972, to 1,799 cars shipped in July of 1974, an increase of over 23%. Additionally, the cost of vehicle repairs and replacements generally, has gone up by approximately 30%.

Thus, what the above figures demonstrate are claim

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APPENDIX / 705

reduction figures in the face of increased volume of shipments as well as increased value of cargo shipped -- a situation which make the claim reduction figures even more noteworthy.

Jerome Moser
Jerome Moser

Sworn to before me this
5th day of November 1974

[illegible]

Signed original filed with brief
in MC-1343 (Released Rates application)

Jerome Moser

Sworn to before me.
this 13th day of
January 1975.
Morton E Kief

MORTON E. KIEF
Notary Public, State of New York
No. 31-2109025 - Qual. in N. Y. County
Commission Expires March 30, 1975

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-C-7287
AAACON AUTO TRANSPORT, INC. -- INVESTIGATION AND
REVOCATION OF CERTIFICATE

DOCKET NO. MC-C-7287 SUB NO. 1
AAACON AUTO TRANSPORT, INC., PETITION FOR
DECLARATORY ORDER

DOCKET NO. FF-359
AUTO TRIP USA, INC. FREIGHT FORWARDER APPLICATION

PETITION OF AAACON AUTO TRANSPORT, INC. AND AUTO TRIP USA, INC. TO REOPEN THE RECORD PURSUANT TO RULE 1100.101(b) OF THE COMMISSION'S RULES OF PRACTICE FOR THE RECEIPT OF FURTHER EVIDENCE

Comes now Aaacon Auto Transport, Inc. and Auto Trip, USA, Inc., (hereinafter sometimes referred to collectively as "Aaacon" or as "petitioner") and submits this petition requesting that the Interstate Commerce Commission reopen the record in the above-captioned proceeding solely for the purpose of receiving in evidence certain material which arose subsequent to both the close of the hearings herein and the submission of Aaacon's prior petitions to reopen the record.

LAW AND ARGUMENT

This further petition to reopen the record pursuant to Rule 1100.101(b) of the Commission's Rules of Practice, is submitted in order not to burden the Commission and Administrative Law Judge with the time and expense required to hold additional public hearings. Petitioner has submitted additional evidence in affidavit and documentary form pursuant to the modified procedure provisions of the Rules of Practice. Petitioner is ready and willing to participate in further hearings at the Commission's discretion.

As heretofore noted, evidence discovered subsequent to the close of a proceeding before the Interstate Commerce Commission provides adequate grounds for the reopening of such proceeding. Thus, the Commission ought not to deny reopening where newly discovered evidence is to be presented. Tidewater Express Lines v. U.S., 278 F. Supp. 561 (DC Maryland 1968); Midwest Emery Freight System v. U.S., 295 F. Supp. 112 (DC Illinois 1968); Garett Freightlines v. U.S., 305 F. Supp. 149 (DC Idaho 1969); Carolina Freight Carriers v. U.S., 307 F. Supp. 723 (DC North Carolina 1969). Moreover, the Commission itself has held that it should consider new developments occurring subsequent to the close of a hearing. Burnett 88 MCC 452.

Accordingly, consistency of application of administrative rulings requires that this petition to reopen these proceedings be granted. Dixie Highway Express v. U.S., 268 F. Supp. 239 (DC Mississippi 1967).

A brief statement of the evidence to be presented, an explanation of the non-cumulative nature of such evidence and an explanation of why such evidence was not previously adduced at the hearing, as required by Rule 1100. 101(b) is as follows:

1. Conference Between the Commission Section of Insurance and Home Indemnity Company

Part of the decision of the Administrative Law Judge dated November 30,1973 dealt with Aaacon's representations as to its insurance and Aaacon's coverage or denial of claims. Aaacon has maintained throughout these proceedings that it purchased all of the insurance it represented to the public. Aaacon also asserted that its insurance company, Home, and Aaacon's bonding company, Michigan Mutual, were solely responsible for failure to honor the terms of those policies and to properly settle and defend claims. Aaacon adduced evidence to show that the policies of insurance provided by the Home had no deductible and that Aaacon could not make any settlement thereunder, nor could it voluntarily defend cases brought thereunder as a matter of law. Aaacon also asserted in these proceedings that Home kept Aaacon in the dark as to its actions on claims against Aaacon.

Recently discovered evidence, not heretofore available to Aaacon, corroborates Aaacon's position and proves conclusively that Aaacon's insurer, The Home Indemnity Company (hereinafter sometimes "Home") and Aaacon's bonding company, Michigan Mutual Insurance Company (hereinafter sometimes "Michigan Mutual") acted in a wrongful manner, both breaching their indemnity agreements with Aaacon and violating their duties to defend and compensate Aaacon's customers. The evidence further shows that these actions of Aaacon's insurers were concealed from Aaacon and that where known to Aaacon, were opposed by Aaacon and Aaacon's personnel. Aaacon respectfully submits that the actions of the insurer and bonding company cannot by law and should not by fact, be attributed to Aaacon.

Aaacon has asserted in these proceedings that Home, having filed an undertaking and BMC endorsement with the Commission concerning its obligations to the public, should have been held accountable by the Commission for its lack of coverage. Moreover, Aaacon has asserted that Home's actions, rather than the actions of Aaacon, have caused occurrences which are the subject matter of these proceedings. The newly discovered evidence clearly corroborates Aaacon's contention.

In this regard, attached hereto is the affidavit of attorney Richard S. Birnbaum dated August 20, 1975, which proves that the wrongdoings of Home were known to the Section of Insurance personnel of the Commission who, unbeknownst to Aaacon, held conferences with officers of Home with a view towards getting proper coverage under the policy issued by Home to Aaacon.

A conference between the Chief of the Section of Insurance of the Interstate Commerce Commission, Mr. Len Schloer and Home personnel occurred in January, 1970, just prior to the commencement of the instant proceedings. At the conference Home was informed that it was not properly undertaking the responsibilities of an insurer under the Interstate Commerce Act for claims made against its insured, Aaacon. The evidence of this meeting consists in part of an interoffice memorandum of Home which admits wrongdoing on the part of the Home concerning actions and claims which were under the direct jurisdiction of the Commission's Section of Insurance.

However, although Home failed to comply with the suggestions of Mr. Schloer, the Section of Insurance took no further actions to enforce the requirements of the BMC endorsements filed by Home with the Commission, although the Section of Insurance had both the power and jurisdiction to do so.

The conference between the Section of Insurance and Home and the failure of Home or the Section of Insurance to take further action are germane both to the general question of insurance coverage and the particular cases presented, since they arose in connection with the Levy claim presented by the Bureau of Enforcement in these proceedings. Nevertheless, in its presentations to the Administrative Law Judge in the instant proceedings, the Bureau failed to disclose the conference between the Chief of Section of Insurance and Home and the Bureau failed to disclose the subsequent inaction by Home and the Section of Insurance to fulfill the obligations under BMC endorsement of Home filed with the Commission on behalf of Aaacon and the public.

The Bureau of Enforcement further failed to make available to Aaacon knowledge of this conference between the Section of Insurance and the Home, of which incident Aaacon was totally unaware until recent discovery proceedings of litigation by Aaacon against the Home in the Supreme Court of the State of New York, which said litigation is continuing.

The foregoing evidence is non-cumulative in nature because it sets forth, for the first time in these proceedings, this document and set forth for the first time to the knowledge of Aaacon the activities taken by Commission personnel and the failure of Commission personnel, knowing of the situation, to enforce the undertaking filed by Home with the Commission. The evidence also sets forth for the first time a situation concerning Commission personnel's knowledge of wrongdoing by Aaacon's insurer concerning a claims situation subsequently presented by the Bureau of Enforcement in these proceedings, of which the Bureau failed to inform the Administrative Law Judge concerning the complete facts. The evidence could not have been presented by Aaacon prior hereto because knowledge of the conference between the Section of Insurance and the Home and the document containing this evidence was just recently received by Aaacon. Prior to receipt of this document Aaacon had received only partial excerpts excluding the important information contained herein. Said excerpts were referred to in the January 10, 1975 affidavit of Richard S. Birnbaum, Esq. heretofore submitted.

2. Other Actions of Home Indemnity Company

Additionally, annexed to the affidavit of Richard S. Birnbaum, Esq., are documents demonstrating that Home itself knew that it was acting in "bad faith" with regard to the claims made against Aaacon, for which Aaacon had obtained insurance coverage pursuant to the requirements of the Interstate Commerce Act and the Interstate Commerce Commission.

Evidence obtained by Aaacon in the course of litigation with Home indicates that Home admitted in writing that its policies in defense of claims made against Aaacon were to "create confusion" to obtain contribution from car owners' insurers.

Further evidence also proves that there were defenses asserted by Home in Aaacon claims cases which Home knew to be false and which it directed its attorneys to assert even though Home was advised and acknowledged that they were not legally proper. These false defenses included included denial of relationship between Aaacon and its drivers. The documents further indicate Home was aware that it was chargeable with "bad Faith" but continued these policies and practices anyway.

Additionally, the evidence shows that Home never advised Aaacon of its wrongful practices and has to date sought to conceal then from Aaacon under a policy of concealment. The evidence also shows that where the wrongful practices of Home were brought to Aaacon's attention, Aaacon resisted these practices by Home, even though Home threatened to cancel coverage for"non-cooperation" by Aaacon with Home under the insurance policies. Further documentation proves Aaacon sought primary coverage from Home for car owners wherever possible Home's attempts to lay off liability on the owners' insurance company is shown.

This evidence is non-cumulative in nature because it sets forth for the first time in these proceedings these documents and sets forth for the first time written admissions and other evidence by Home and its attorneys concerning its wrongdoing and bad faith in handling and settling of the specific claims filed against Aaacon referred to therein. The evidence could not have been presented prior hereto because the documents containing same were just recently received by Aaacon in the course of litigation with Home in New York Supreme Court.

It is Aaacon's intention to supply the Commission with such copies of additional materials germane to the situation with regard to Home as it comes into its possession from time to time as a result of litigation between Aaacon and Home in the Supreme Court of the State of New York.

3. The Actions of Michigan Mutual Insurance Company

The results of litigation between Aaacon and its bonding company, Michigan Mutual Insurance Company, are also reported in the affidavit of Richard S. Birnbaum, Esq. The evidence is relevant because it clearly demonstrates that the Michigan Mutual Insurance Company acted improperly in refusing to pay claimants under the bond it provided to Aaacon, which Aaacon had sought to enforce on behalf of the shipping public. The litigation between Aaacon and it bonding company, Michigan Mutual, resulted in the bonding company, which had denied coverage to Aaacon's car owners, remitting premiums paid by Aaacon and paying damages for Michigan Mutuals' lack of coverage and violation of the bonding policy.

The evidence submitted herein is non-cumulative because it sets forth for the first time in these proceedings the results of litigation between Aaacon and the Michigan Mutual Insurance Company which provided the bond. This evidence could not have been presented prior hereto because the litigation was concluded just recently.

4. The Levy and Wolfe Claims Results

The affidavit of Richard S. Birnbaum also contains material germane to the disposition of the Levy and Wolfe claims. Both of these cases were arbitrated in New York on documents alone, without the necessity of any witnesses being present or any traveling by parties. In both cases the amount awarded by the arbitrator was under ten percent (10%) of the amount claimed by the shippers. The evidence of these claims dispositions is relevant to these proceedings because it demonstrates the existence and feasibility of arbitration, and the ease of arbitration. It also demonstrates the questionable nature of the testimony of those claimants adduced by the Bureau of Enforcement in these proceedings. The Bureau of Enforcement has heretofore taken the position that the testimony of claimants was unassailable and incontrovertible as to the validity and extent of claims and damages and that Aaacon's refusal to passively accept and pay all claims submitted to it constituted evidence of Aaacon's wrongdoing. The determination by impartial arbitrators and the reviewing courts that the claimants, who were witnesses to these proceedings, were entitled to less than ten percent (10%) of the amount claimed constitutes evidence going to the question of objectivity of the claimants, and brings into question the testimony of shipper-witnesses in these proceedings. The evidence so presented demonstrates that Aaacon acted reasonably in resisting claims as presented to it.

The evidence presented herewith concerning the *Wolfe* and *Levy* matters is non-cumulative in effect because it represents the first time that Aaacon can report on the determination of the arbitrations and court judgments in these proceedings with regard to the *Wolfe* and *Levy* claimants. The evidence could not be previously adduced because it concerns events which just recently occurred in the on-going claims presented.

5. Investigation of Drivers

The affidavit of Richard S. Birnbaum, Esq. also contains new evidence relevant to the proposal of the Bureau of Enforcement and the Administrative Law Judge herein that

Aaacon should somehow clear the nation's highways of "accident-prone" drivers. In this regard, and in particular regard to the Rust case presented by the Bureau of Enforcement in these proceedings, Aaacon has recently obtained from the files of Home, the background and history of the driver William Nelson Beck. This history indicates that driver Beck, who was charged with wrongful driving in the Rust case had an absolutely clean and clear prior driving record. A copy of his record, indicating the absence of any prior tickets, prior accidents, or traffic violations of any sort, is annexed to the affidavit of Richard S. Birnbaum. This evidence demonstrates the futile and misguided nature of the proposal that Aaacon be responsible to clear the highways of accident-prone drivers. Their proposal is not only overbroad and beyond the scope of the instant proceedings, it is also impossible of performance. The Bureau has failed to indicate how such a proposal could be effectuated. If the Bureau knows how it can be done, it should pass the suggestion on to the Department of Transportation for use by all carriers forthwith.

This new evidence is non-cumulative because it presents for the first time the driver record of William Nelson Beck. The evidence was not previously adduced because it was contained in the claims files of Home and was just recently made available to Aaacon in litigation in the New York Supreme Court.

6. The Arbitration Provision

Additional evidence is adduced in the affidavit of Richard S. Birnbaum, Esq. concerning the use of arbitration by the American Trucking Association and Shippers National Freight Claims Counsel in establishing an arbitration tribunal to determine disputes arising between carriers and shippers in interstate commerce. This evidence demonstrates the reasonableness of arbitration, in terms of use of arbitration by others in the interstate transportation field, it further demonstrates that an authorization by the Congress of the United States, through the Federal Arbitration Act, of arbitration of shipper and carrier disputes permits such arbitration without further authorization from or modification by the Commission. Specifically, the position of the American Trucking Association and the Shippers National Freight Claim Counsel is that Commission approval of arbitration is not required because Congress already authorized it by enacting the Federal Arbitration Act. The evidence so presented is non-cumulative in nature because it shows the action of another body of professional transporters, similarly situated to Aaacon, in that they are engaged in interstate commerce and subject to the Federal Arbitration Act. This evidence could not have been presented prior hereto because it just recently occurred, being contained in a report dated July 7, 1975, of Traffic World Magazine of a meeting in June, 1975 of the National Freight Clain Claims Counsel's Shipper-Carrier convention in New Orleans.

CONCLUSION

The Commission should have before it in these proceedings all relevant evidence where, as in the instant case, the evidence is of an on-going nature, can only be discovered through litigation, concerns meetings and discussions between personnel of the Commission and insurance companies which were unknown to Aaacon, or which otherwise concerns matters germane to these proceedings. The relevant facts should be submitted to the Commission and where, as here, it is appropriate to reopen the proceeding, the proceeding should be reopened to receive such additional evidence into the record.

Respectfully submitted,

MORTON E. KIEL
Suite 6193
5 World Trade Center
New York, New York 10048

Practitioner for Aaacon Auto Transport, In
and Auto Trip USA, Inc.

Dated at New York, New York
this 28 day of August, 1975

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

RICHARD S. BIRNBAUM, being duly sworn, deposes and says:

1. I am an attorney and make this affidavit in support of the petition of Aaacon Auto Transport, Inc. and Auto Trip U.S.A., Inc. dated August 20, 1975 (collectively "Aaacon") to reopen the record in dockets MC-C-7287, MC-C7287 sub. no. 1 and FF-359 respectively.

2. As noted in my prior affidavit of January 10, 1975, heretofore submitted in these proceedings, I am fully familiar as an attorney with the facts and circumstances surrounding the litigation between Aaacon Auto Transport, Inc. and its insurer The Home Indemnity Company ("Home") as well as litigation between Aaacon and its bonding company, Michigan Mutual Insurance Co.("Michigan Mutual"). I am also familiar with the facts surrounding the instant proceedings.

3. At the present time Aaacon has a motion before the Supreme Court of the State of New York in its litigation with Home to obtain additional disclosure from Home of records concerning Home's dealings with Aaacon, the public and the Interstate Commerce Commission. This motion has not been determined at this time, but in the interim, Aaacon has obtained additional records from Home which are important and

germane to the issues of the insurer's wrongdoing, Aaacon's opposition thereto and the failure of Commission personnel to correct the situation giving rise to public complaints. Your deponent believes that this new evidence should be brought to the immediate attention of the Commission because the information therein goes beyond the excerpted summaries available to me in my January 10, 1975 affidavit.

The Responsibility of Home For Accusations Made Against Aaacon

4. This new evidence is germane, inter alia, because Aaacon has asserted throughout these proceedings that the actions of its insurers and bonding company were beyond Aaacon's control and were in violation of both the insurance policies issued to Aaacon and the BMC endorsement filed by Home with the Interstate Commerce Commission.

5. Accordingly, annexed hereto as Exhibit "A" is a copy of the actual interoffice memorandum of Home dated January 12, 1970, which reports a conference between the Chief of the Section of Insurance of the Interstate Commerce Commission, Mr. Len Schloer, and officers of Home concerning the *Levy* case. Mr. Schloer (mispelled in the memo Schollar) dissatisfied with Home's failure to perform under its insuring agreements and BMC endorsements, reminded Home of its obligations under its BMC endorsement filed with the Interstate Commerce Commission.

BEST COPY AVAILABLE

The memo states in relevant part:

> "On Friday, 1/9/70 Mr. Schollar came into the office and we were advised that the insured transported vehicles under an icc permit, number 125-808. I contacted Mr. Pynn and ascertained that we had filed a certificate of insurance with the icc commission. Needless to say this changes our entire outlook on the handling of this account."
>
> ***
>
> "As far as the vehicle, we have refused to post a bond. This decision was made prior to our knowledge that our insured was working under an icc permit. The vehicle is being transported under our icc permit and our insured is receiving a benefit from its operation, I feel, we will be held responsible to post a bond. Firemn's Fund has denied any liability and coverage to our operator. To eliminate unnecessary litigation, I feel we should step in, do what is necessary in South Carolina to release the vehicle and handle the case on its merits."

6. Especially interesting is the last paragraph of said memo in which a Home officer stated that Home will have to file a bond in the Levy matter, despite Home's prior refusal, because of the endorsement filed by Home with the Interstate Commerce Commission on behalf of Anscon.

7. Nevertheless, at no time did the Home ever file such a bond. Further, at no time was any disciplinary action ever taken by the Section of Insurance against Home for its failure to file the bond subsequent to the conference.

8. The inaction of the Home Indemnity Company and the inaction of the Section of Insurance in the Levy matter is particularly relevant to the instant proceedings where, despite Aaacon's assertions to the contrary, the Administrative Law Judge characterized the situation as "the inability or unwillingness of (Aaacon) to have the attachment lifted (by means of filing a bond)".

9. Since, under the language of the policy of insurance, Aaacon alone could not intervene in the South Carolina litigation to file a bond, it is clear from the foregoing additional new evidence that Home's refusal to do so despite Aaacon's request and despite the request of the Section of Insurance of the Interstate Commerce Commission, is attributable only to Home. It is further clear that the Commission took no action thereafter to require Home to file such a bond and lift the attachment and more importantly, that the Bureau of Enforcement did not present this evidence to the Administrative Law Judge.

10. Equally as important, at no time was the Administrative Law Judge or Aaacon informed of this conference between Commission personnel and Home concerning broad issues of insurance coverage which was a pivotal part of the Bureau of Enforcements accusations against Aaacon. The fact and substance of the conference were unknown to

BEST COPY AVAILABLE

Aaacon at any time prior to the present.

11. The results of the conference, and the failure by Commission personnel from the Section of Insurance to take action, remained undisclosed during the instant proceedings and has severely hampered the development of the full facts in this proceeding.

12. Instead of castigating Aaacon, which the Bureau of Enforcement has sought to do throughout this case, the Bureau should have properly placed the blame with Home. These new facts alone, without more, constitute grounds for reopening these proceedings in order to develop on the record, the true facts and circumstances surrounding insurance coverage and claims handling. These facts raise serious questions, including:

a) Whether Home thumbed its nose at its legal obligation under Federal law and its undertaking filed with the Interstate Commerce Commission on behalf of Aaacon and the public.

b) Why Commission personnel, knowing of the situation, and having jurisdiction and authority to enforce BMC endorsements of Home filed with the Commission, subsequently took no action to remedy this matter or to provide to the public the coverage which was paid for and which Aaacon was seeking on behalf of its customers from Home.

c) Why the Commission, having jurisdiction and authority to approve insurance companies which are permitted to file undertakings on behalf of interstate carriers, took no disciplinary actions against the Home, despite Home's flagrant abuse and breach of its obligations filed with the Commission in the BMC endorsement.

d) Why the Bureau of Enforcement, in its investigation and presentation of cases in the instant proceedings, failed to bring forth this information and present it in these proceedings.

13. It is respectfully suggested that in an instance such as this, where the Commission itself, acting through its personnel, attempts to obtain a result from an insurer and subsequently fails to do so and where the Bureau of Enforcement fails to make these facts known to the Administrative Law Judge, a matter of utmost seriousness has been brought to light. Such actions constitute not only a violation of the constitutional and statutory duties of investigation and disclosure of the Bureau of Enforcement of the Interstate Commerce Commission,

but also a deprivation of Aaacon's rights under due process of law, and a distortion of the record in these proceedings.

Other Acts of Home Indemnity Company

14. Other acts of Home, for which Aaacon has been accused, have also been recently documented. Thus, testimony of Ralph Zola, an officer of Aaacon, in the instant proceedings, to the effect that Aaacon took all possible steps to make its insurer properly settle and defend claims, was not even summarized by the Administrative Law Judge and apparently given little weight by him. However, Aaacon's attempts to obtain coverage for itself and the public have been corroborated by recent documents obtained by Aaacon from Home in the course of litigation.

15. Accordingly, as an example, in the Kurt matter, Home's policy of refusal to provide coverage under its insurance policy for any person other than Aaacon is documented. This refusal occurred despite the fact that the policy provided coverage as additional insureds, for the driver and owner of the vehicle.

16. Exhibit "B"* annexed hereto is an interoffice memo of Home dated January 15, 1971, in which Home set up false defenses and refused to defend the driver or car owner. Not only

*Please note that due to the fact that Exhibits B and E are handwritten, Aaacon has taken the liberty of appending an additional typewritten copy. Aaacon has also [illegible] exhibits.

does the memo demonstrate that Home set up the false defenses such as non-operation or control of the vehicle by Aaacon, it also demonstrates that these lawless defenses came from top echelon of Home:

> "This account is being supervised by the Home office. Do not do anything on this case that is not authorized by this office first.
>
> We will not defend anyone else in this matter."

17. Other uses of false defenses by Home shown annexed hereto as Exhibit "C" is a two-page memorandum dated February 9, 1971 from the attorneys for Home, indicating that Home's instructions were to deny coverage to the driver as having no relationship to Aaacon, even though this was known to be false and raised "serious issues."

18. The bad faith and false defenses asserted by Home against Aaacon's claimants can also be seen in Exhibit "D" annexed hereto, in which a copy of an interoffice memorandum of Home dated March 10, 1972 states:

> "..we will have a very difficult time denying agency between Aaacon and Beck."
>
> ***
>
> "The whole thing comes down to this; neither our attorney or I beleive that we can prove that Beck was not the agent of Aaacon of New York but we will try."

19. Similarly, Exhibit "E" annexed hereto is an inter-office memo of Home dated August 21, 1970 indicating all actions subject to home office "prior approval"; that Home takes a "hard-line" in these cases; and that Home is aware it is being "looked at" by the Commission in its handling of these claims. Aaacon again notes no action was taken by the Commission against Home in these matters despite the awareness of the Section of Insurance of the wrongful acts of Home.

20. Additionally, Aaacon has been wrongly accused in the instant proceedings of declining claims on the grounds that the car owner had insurance. To the contrary, Aaacon has asserted throughout these proceedings that it never declined liability or in any way refused a claim on the ground that a car owner had other valid insurance. Aaacon's position was at all times, and still is, that even though a car owner has insurance of which Aaacon may separately seek the benefit, Aaacon is liable to the car owner to accept and pay claims, regardless of any possibility of recovery over from the car owner's insurance company. Cf. *United States v. Auto Driveaway Co.*, 464 F2d 1360 (7th Cir. 1972). In this regard, there is not one instance in the entire record where Aaacon ever declined a claim or denied liability

on the ground that the car owner had valid insurance on the vehicle of his own.

21. But importantly, it would appear that Home did not follow Aaacon's policy. Rather, on its own, Home sought to decline coverage to car owners where there was insurance on the vehicle. Thus, Exhibit "F" annexed hereto is a letter dated November 9, 1971 from Home to Rust's insurer, Transcontinental Insurance Company, not only declining coverage for Rust but requiring Rust's insurer to take over the defense of Aaacon. Further in Exhibit "G" annexed hereto, the attorneys for Home, by a letter dated March 9, 1973, characterized the report of Mr. Calderone, an employee of Home, to the effect that:

> "It was Home's policy in regard to cases like this in the past to...create confusion in the hope that the liability carrier covering the vehicle being transported might contribute something toward settlement of the case." (Emphasis added)

These exhibits are clear evidence not only of Home's callous indifference to its contractual obligations, the endorsements it filed with the Interstate Commerce Commission, and insurance laws, but also a clear demonstration that wrongful acts of Home have been unfairly attributed to Aaacon.

22. It is important to reiterate that until the commencement of the litigation by Aaacon against Home, and the recent discovery proceedings therein, which have been only partially completed, these documents were unknown to Aaacon. This was due in large measure to Home's policy of concealing its actions from Aaacon and resisting disclosure of documents which Aaacon is entitled to as a matter of New York insurance law. Home had previously been admonished by the Courts to cease its policy of concealment, which it has not done. Cf Colbert v. Home Indemnity Co., 45 Misc. 2d 1093, 259 N.Y. S2d.36. For over five years Home has refused to turn over to Aaacon documents concerning claims against Aaacon despite Aaacon's repeated requests therefor . Accordingly, Aaacon has been forced to seek a Court order to obtain them.

23. Conversely, the attempt of Aaacon to gain coverage on behalf of its customers and drivers, and Aaacon's resistance to Home's unlawful tactics, can be seen in Exhibit "J" annexed hereto this is a letter of Ralph Zola dated October 5, 1972 rejecting false answers to interrogatories prepared by the Home and submitted to Aaacon for signature by its officer, Ralph Zola. Mr. Zola rejected the document and deleted material contained therein as untrue and returned it to the Home. Therein Mr. Zola also sought insurance coverage for Hunt.

24. As a result of Mr. Zola's refusal to execute false affidavits prepared by Home, Home undertook the tactic of threatening to deny coverage to Aaacon on the basis of "non-cooperation" on the part of Aaacon. This was reflected in the letter of Home's attorney dated November 7, 1972 annexed hereto as Exhibit "I" written by Home's attorney without even reviewing the insurance policy itself (which policy covered all vehicles being transported by Aaacon).

25. Moreover, Aaacon's position to obtain coverage for its car owners and the public and to resist Home's wrongful actions is reflected in Exhibit "J", an interoffice memo of Home officers dated December 5, 1972, stating that Aaacon took all possible steps to have the Home policy made primary to cover car owners. In that memo Home employees stated of Aaacon officer, Ralph Zola:

> "Remind our counsel that Zola will take any
> position designed to have Home be the primary
> carrier..."

26. It is clear from the tenor and nature of these documents that Aaacon refused to be a party to any schemes by Home which would deny coverage to Aaacon's customers pursuant to its insurance policy and contrary to Home's undertaking filed with the Commission.

27. The actions by Home, which alone controlled the defense of these claims, were not isolated or restricted to the *Levy* and *Lust* cases. For example, as further indication of Home's policy of failure to defend, annexed hereto as Exhibit "K" is an interoffice memo of Home dated December 6, 1973, concerning claims made against Aaacon in the [illegible] and

Kannicko cases. In this exhibit, Home expresses concern about its "bad faith" in defense and handling of these claims against Aaacon.

28. Despite all these facts, Home is still certified by the Section of Insurance as an approved insurance company authorized to file BMC endorsements with the Commission. No action has been taken against Home by the Commission in the over five years since the January, 1970, conference.

29. It is respectfully submitted that to accuse Aaacon of wrongdoing ascribable to Aaacon's insurer, especially when the wrongdoing was known to and subject to control by Commission personnel who took no further action, is both unfair and inequitable.

Aaacon's Investigation of Drivers

30. With respect to the question whether Aaacon should "remove accident-prone drivers from the road", as the Bureau of Enforcement suggests, the driving record of the driver in the Rust case, William Nelson Beck, is contained in Exhibit "L" obtained from Home. This driver has no prior history of accidents of any nature whatsoever. The only entries on this exhibit both relate to the Rust accident, one relating to the accident itself, and the other relating to a suspension of the driver's license subsequent to the accident.

31. This driver's record stands in contrast to the undocumented hearsay testimony permitted by the Administrative Law Judge in the instant proceedings characterizing driver Beck as an arch criminal wanted in several states. Regardless of whether the hearsay testimony accepted by the Administrative Law Judge can be reconciled with the actual evidence of Beck's driving record submitted herewith, it is clear that nothing in Beck's prior driving record indicates that Beck was "accident-prone" or that Beck should otherwise be denied access to the use of the interstate highways of the United States. Equally important is the fact that neither the Bureau of Enforcement in presenting the hearsay testimony referred to, nor the Administrative Law Judge in accepting it, indicated how such evidence of criminal records can be obtained (it being the policy of Federal law enforcement agencies not to make available criminal records of individuals).

The Actions of Aascon's Bonding Company

32. The situation with respect to Aascon's bonding company, Michigan Mutual, is similar. The administrative Law Judge found that Aascon was not bonded (despite Aascon presenting the actual bond in evidence). It has been Aascon's position throughout that while Aascon did obtain a proper bond from Michigan Mutual for the public, Aascon had difficulty

in making Michigan Mutual live up to the terms of its obligations under such bond.

33. In this regard, Aaacon recently concluded litigation entitled Aaacon Auto Transport, Inc. v. Michigan Mutual Insurance Co. (Civ. N.Y. 125422-69) concerning Michigan Mutual's failure to pay claims under the bond which was referred to in the instant proceedings. In that litigation Aaacon was able to obtain both a return of premium and a payment of damages as a result of the failure of Michigan Mutual to perform its obligations to the public, under the bond policy purchased by Aaacon.

34. This litigation with Michigan Mutual further demonstrates that Aaacon was at the mercy of its insurers. It also shows that the failure of Aaacon's indemnitors and bonding companies to live up to their obligations may not be imputed to Aaacon, which has had to take to Court two separate insurance companies as a result of their failure to pay claimants.

35. It would appear that both insurers' actions regarding claimants of Aaacon are proper subjects for further investigation by the Commission, and if violations of their undertakings are found, appropriate action be taken.

36. In any event, it is clear that to blame Aaacon for the purposeful wrongful acts of its insurers, over which it had no control and which Aaacon opposed when informed thereof, violates the most fundamental concepts of fairness and constitutionality.

Arbitration of Claims

37. In the instant proceedings Aaacon has been accused of refusing to arbitrate cases. Additionally, arbitration has been characterized as placing an "onerous burden" upon claimants requiring them to "come to New York" or else to "abondon their claims". These accusations were made despite the fact that Aaacon presented evidence that Aaacon had arbitrated many claims, and continues to do so; that arbitration does not require either the shipper-claimant or the shipper-claimant's witnesses to travel to New York but can be done on documents alone; that in arbitration a speedy determination of disputes between the parties could be had; and that overreaching by shipper-claimants is avoided by the easy access of both the carrier and shipper-claimants to the inexpensive determination of arbitration.

38. As additional further evidence thereof and in light of the ongoing nature of the cases presented in this proceeding, your deponent presents further evidence concerning the

outcomes and final determinations of the claims of General Wolfe and Levys with which he is fully familiar.

39. The claims put into arbitration by General Wolfe resulted in an award by the arbitrator, subsequently confirmed in Court, of approximately eight percent (8%) of the $5,000 Wolfe claimed against Aaacon. This amount has been fully paid and the award discharged.

40. The Levy case has likewise been arbitrated and in that case the award of the arbitrator was in the amount of four percent (4%) of the $50,000 claim in litigation made by the Levys against Aaacon.

41. From the foregoing it is clear that in both Wolfe and Levy, the claims made against Aaacon were far in excess of the amounts which constituted reasonable losses with respect to shipments. It is also submitted that the size of the arbitrators' awards in these cases -- being only a fraction of the claims of the shipper-witnesses in their testimony in these proceedings, is eloquent proof of the fact that Aaacon had acted reasonably in these claims situations. These arbitrators' determinations also raise serious questions going to the objectivity, if not the veracity itself, of the testimony of shipper-witnesses presented by the Bureau of Enforcement.

42. Both the Levys and Wolfe arbitrations were held on documents alone. Neither the claimants nor their witnesses were required to appear in New York City. These arbitrations were held in a minimum of time, with both sides having opportunity to file rebuttals. It is clear that arbitration in both these matters provided a competent and reasonable way of disposing of these cases. Both awards were reviewed and confirmed by the courts of proper jurisdiction.

Reasonableness of Arbitration

43. As further recent and additional evidence of reasonableness of arbitration practices by Aascon, annexed hereto as Exhibit "M" is a recent article from Traffic World dated July 7, 1975, which reports that the American Trucking Association and the Shippers National Freight Claim Council have formed an arbitration panel specifically to settle shippers' claims against carriers. It should be noted that the position of the American Trucking Association and the Shippers National Freight Claim Council is that since the United States Congress authorized arbitration of disputes in interstate commerce by enacting the Federal Arbitration Act, no Commission approval is required in order for these associations to arbitrate shipper claims against carriers. Specifically, the position

of the American Trucking Association and the Shippers National Freight Claim Council is that:

> "Regulatory approval for the formation of (an arbitration panel) is not required, but is already authorized by the U.S. Arbitration Act of 1925. It allows this to be done."

CONCLUSION

44. Accordingly, your deponent respectfully submits that the Commission should obtain this additional evidence by reopening these proceedings and upon said reopening should accept the documents submitted herewith, and further, should as well obtain testimony and documentation from the Home Indemnity Company, Michigan Mutual Company and the staff of the Section of Insurance of the Interstate Commerce Commission.

WHEREFORE, your deponent respectfully prays that Aacon's petition to reopen the records should be in all respects granted.

Richard S. Birnbaum

Sworn to before me this
20th day of [illegible], 1975

[illegible] January 22, 1970

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

APPENDIX [illegible]

In the present case, we have advised the Armand that we will defend him and if his [illegible] are detained to [illegible] post a bond. The operator is an independent contractor, therefore, we have a [illegible] question. It is suggested that he [illegible] to maintain contact [illegible] him a [illegible].

As far as the vehicle, we have refused to post a bond. This [illegible] the rule prior to our knowledge that our Armand was [illegible] on the [illegible]. The vehicle is being transported under our [illegible] and our Armand is receiving a benefit from its operation, I feel, we will be held responsible to post a bond. [illegible] coverage to [illegible]. To eliminate unnecessary litigation, I feel we should step in, do what is necessary in South Carolina to release the vehicle and handle the case on its merits.

I await your advice.

[illegible]
cc: Mr. [illegible] - Underwriting

APPENDIX 1791

Attached please find the contents of our entire file. Please handle suit and only defend our named insured Aascon and deny ownership, operation and control. Please note that there is a punitive damage count. If appropriate please send a Reservation of Rights Letter to our insured and a copy to our office.

This account is being supervised by the Home office. Do not do anything on this case that is not authorized by this office.

We will not defend anyone else in this matter.

H. Allen

APPENDIX 12/2

OBO-NEW ASSIGNMENTS

FROM
LOSS CLAIM HEAD [illegible]
LOCATION [illegible]

TO
LOSS CLAIM HEAD [illegible]
LOCATION [illegible]

DATE [illegible]

Attached hereto is a copy of our Notice of Claim Form H-1020a (E) with pertinent information necessary for you to complete your OBO Assignment. 081A5842577 [illegible]

COVERAGE QUESTION ☐ YES ☐ NO

FILE IS ☐ FOIL ☑ CR

GENERAL REQUESTS

☐ 1. ASSURED'S S/S
☐ PERMISSIVE USE
☐ COVERAGE
☐ 2. DRIVER'S S/S
☐ 3. CLAIMANT'S S/S
☐ 4. WITNESS' S/S
☐ 5. PASSENGER—INSURED S/S
☐ 6. PASSENGER—CLAIMANT S/S
☐ 7. POLICE REPORT
☐ 8. WAGE CHECK
☐ 9. ACTIVITY CHECK
☐ 10. ARRANGE PX
☐ 11. ARRANGE VEHICLE INSPECTION SUFFIX NO.
☐ 12. CONTACT ATTORNEY
☐ 13. OTHER

When requests contain more than one item, use number corresponding to those shown above when entering "Remarks" or Special Facts.

REMARKS: [illegible]

ASSIGNED TO (STAFF OR ADJ. STOP FACILITY) [illegible]

AUTHORIZED BY [illegible]

DATE [illegible]

H-21920 (1-)

ACKNOWLEDGEMENT TO [illegible]

#1

8/21/70

Pat Morgan, Claim Supvr. Herbert Allen, Supvr.

Charlotte, No. Carolina Metro Loss-Claim

File 031-A-570769
Insured: AAACON Auto Transport

I have just received your memo of 7/13/70 and I am replying to same:

1. I am attaching copy of the insured's daily.

2. Under no circumstances will we enter an appearance for the insured's operator.

3. Our insured comes under the ICC Regulations, one of which is that our insured must have a representative in each state to accept service on summonses. Please do not bring up the question of quashing service and just go ahead and put in a defense for the named insured, AAACON Auto Transport, only. Under no circumstances are you to do anything on this file without our prior approval. We take a hard line on these cases and these files are being handled by Home Office as well as being looked at by the New York State Insurance Department and the Interstate Commerce Commission.

ha/nv
enc.

ZEPNICK & DIRECTOR
ATTORNEYS AT LAW

SOL ZEPNICK
GERALD DIRECTOR

HERBERT MINSTER
ASCHER T. BRAND

15 PARK ROW
NEW YORK, N.Y. 10038
SUITE 2503

WORTH 4-9595

February 9, 1971

The Home Insurance Co.
59 Maiden Lane
New York, N.Y. 10038
Att: Mr. Herb Allen

RE: SEGOVIA v BUCKLEY &AAACON AUTO TRANSPORT INC.
File # 081-A-570-920
My file #1536

Gentlemen:

I am in receipt of the above file for handling and submit the following initial report.

BRIEF STATEMENT OF FACTS

On December 18, 1969, a Thursday, at 2:45 P.M., a vehicle being operated by James Aldunate and owned by Sylvia Buckley, was being transported to Florida through AAACON Auto Transport, Inc. and while this vehicle was going south on U.S. 301, it ran off the right side of the road and hit a telephone pole and overturned .The driver, James Aldunate, was decease at the scene of the accident and the two passengers in the vehicle, Hugo Segovia and Ann Ranniko were injured.

This file has been created for the present time to handle the two personal injury claims of the passengers.

APPEARANCES

Pursuant to he specific directions of your office, I have appeared for AAACON Auto Transport, Inc. only. I have been advised to defend this action on the basis that we are not the owner or the operator of the vehicle and have no relationship to the parties. The research of my office indicates that this may not be entirely so and serious issues do arise, but for the present time, pursuant to he instructions of your office, I have appeared as directed.

APPENDIX 17/6

NO APPEARANCE FOR OWNER

Furthermore, pursuant to the directions of your office, I am not appearing for the owner of the vehicle and the file would indicate that Allstate Insurance Co. is not going to appear fother either. Frankly, I don't know what the situation is on that, but I do know that I am advising Mrs. Buckley of that fact.

NATURE AND EXTENT OF THE INJURIES AND LIABILITY

It is impossible to make any determination at the present time of the nature and extent of the injuries as there is no information in my file which would lead us to be able to make any kind of a determination.

FURTHER PROCEEDINGS IN THIS SUIT

I will report further to your office upon receipt of the requested investigation, which is attached hereto.

SUGGESTED INVESTIGATION

1. Police report - copy of the police report which I have in the file was unclear and I would appreciate a new copy.

2. Hospital records - The hospital records of the operator, James Aldunate and the passenger should be made part of this file.

3. CIB - All of the plaintiffs should be put through the CIB report.

4. MV242 - The MV242 or driver's record of both the plaintiffs should be made part of this file.

5. Medicals - the plaintiffs' attorney's office should be contacted and an exchange of medicals should be requested.

FURTHER REPORTS

I will report further to your office upon receipt of a bill of particulars.

Yours very truly,

ZEPNICK & DIRECTOR
By
Gerald Director

CD:mg

You missed the point in my memo of 2-29-72 with the enclosures. I'm not talking about the damage to the car driven by Beck. We are concerned about the two serious B.I. claims. In light of the letter of Aaacon to a customer named Carlyle (Rust will say he got one just like it) and in light of the fact that Aaacon states "...and the transportation of your car is fully supervised, not by some second or third party, but by us, AAACON AUTO TRANSPORT", we will have a very difficult time denying agency between Aaacon and Beck. Aaacon of New York, with the correct address is shown on the letterhead. Our attorney advises that if our Motion is denied, and it probably will be, we are stuck with at least part of any judgment for the two B.I.'s. I agree with him. The information our attorney requested which I in turn requested from our front office by memo of 12-13-71 has never been sent to us. This is very important. Also we need a prompt further investigation as requested at end of my memo of 2-24-72. This is also very important. Has the insured been put on notice, as requested 2-24-72, with regard to coverage for the additional amounts sued for?

Re: your request of 3-8-72, we will be glad to follow up on this, but we don't know which policy is involved. The wording is probably very much like ours, but we need to quote it exactly. Please send us a copy or specimen of the policy involved.

The whole thing comes down to this. Neither our attorney or I believes that we can prove that Beck was not the agent of AAAcon of N.Y., but we will try.

EXHIBIT "E-1"

APPENDIX, 7417

[illegible] 55/192

[illegible]

[illegible]

[illegible] claim [illegible]

to a captain [illegible]

ORIGINATOR – PLEASE DO NOT WRITE BELOW THIS LINE

REPLY

If the fact that [illegible]
the transportation of [illegible] was fully
sponsored, & not by [illegible] a
third part[y], [illegible] "MACON AUTO
TRANSPORT," we could have a very differ[ent]
[illegible] between [illegible]
back [illegible] & N.Y. with the [illegible]

FROM

SIGNED

DATE

GNL 873 (7) REV. 3-63

[illegible]

ORIGINATOR – DETACH AND RETAIN FOR FOLLOW-UP

APPENDIX 1748

EXHIBIT "E-2"

[illegible] COMPANY

TO [illegible]

FROM

OM-A-581, 63

SUBJECT

PRODUCER'S LOCATION

DATE 2-10-72

MESSAGE

[illegible] phone [illegible] the [illegible]. Our attorney advises that if you believe [illegible] probably will [illegible] at least [illegible] [illegible] [illegible] with [illegible] [illegible] [illegible]

ORIGINATOR-SENDER DO NOT WRITE BELOW THIS LINE [illegible] 3-13-72 [illegible]

REPLY

Have you been contacted? This is very important. Also proceed and a good follow investigation as requested in [illegible] of my letter 2-24-72. This is also very important. Has the bond been put on notice as requested 2-24-72, with regard to necessary [illegible] for the additional amounts asked for?

FROM

SIGNED

DATE

[illegible]

CSL 375 (?) REV. 3-63

ORIGINATOR – DETACH AND RETAIN FOR FOLLOW-UP

EXHIBIT "E-3"

APPENDIX 1749

[illegible] 3

SUBJECT 081-A-581,25-2

3-1

MESSAGE

Re your request of 3-5-7[illegible], we find we [illegible] to follow [illegible] [illegible] which policy [illegible]. The [illegible] probably be [illegible] [illegible] [illegible] [illegible] [illegible] a copy of [illegible] [illegible]

ORIGINATOR-PLEASE DO NOT WRITE BELOW THIS LINE

SIGNED

REPLY

The whole thing comes down to this [illegible] an attorney now [illegible] believe that we can prove that he [illegible] the agent of AA[illegible] for N.J. [illegible] [illegible].

FROM

SIGNED

DATE

CNL 873 (?) REV. 3-63

ORIGINATOR – DETACH AND RETAIN FOR FOLLOW-UP

APPENDIX 1750

EXHIBIT "E-4"

November 9, 1971

Transcontinental Insurance Company
76 William Street
New York, New York

Gentlemen:

File 031A504252
Our Insured: Aaacon Auto Transport
Claimants: Jesse and Aldo Lewis
Date of Accident: 5-7-70
Place of Accident: Davie County, North Carolina
Your Insured: Roy Dean Rust
Your Policy Number: AL4800240

We are presently defending a superior court of the State of North Carolina summons and complaint for our insured Aaacon Auto Transport, Inc. for the above-captioned loss.

Upon investigation we find that Aaacon Auto Transport, Inc. is an omnibus insured under your policy issued to Roy D. Rust and we are hereby requesting that you take over the defense and indemnification of Aaacon Auto Transport for this action.

If you fail to take over the defense of Aaacon Auto Transport we will hold you for all costs, legal or otherwise that we may incur in defending Aaacon Auto Transport, Inc.

Very truly yours,

Herbert Allen
Supervisor
Metro Loss Claim Department

HA:mw

EXHIBIT "F"

PATRICK, HARPER & DIXON
ATTORNEYS AT LAW
FIRST SAVINGS & LOAN BUILDING
HICKORY, N C 28601

BAILEY PATRICK
EDWYN HARPER JR
CHARLES D DIXON
JAMES T. PATRICK

STEPHEN M. THOMAS

P O BOX 218
TELEPHONE
328-6100
AREA CODE NO 704

March 9, 1973

Mr. Ralph McNatt
Home Indemnity Company
P. O. Box 2666
Charlotte, North Carolina 28201

Re: Claim Number: 081 A 581,252
Jesse Wilson Lewis vs. William Nelson Beck, et al
Alda Lewis vs. William Nelson Beck, et al

Dear Ralph:

This is to confirm our telephone conversation of today in which I advised you that I had just received a telephone call from Mr. Calderone and Mr. Wedinger of your New York office, and they requested that I advise you that we were not to have Mr. Zola fly from Miami to Morganton unless the matter had not been settled by Monday afternoon. If it is necessary that Mr. Zola be present at the trial, we are to arrange to have his expenses paid as he previously demanded.

In addition to the above, we discussed briefly, certain aspects of the case in general, and Mr. Calderone advised that it was their feeling that Home Indemnity would be primarily liable in this matter due to the fact that there was an ICC permit in the Rust vehicle. Mr. Calderone further stated that their policy in regard to cases like this in the past was to defend the matter as well as possible and to create confusion in the hope that the liability carrier covering the vehicle being transported, in this case the Rust vehicle, might contribute something toward the settlement of the case. We also discussed the fact of the possible value of the case, and I advised these gentlemen as I had previously advised you, that a verdict for Mrs. Lewis could range anywhere from \$20,000.00 to \$25,000.00 to \$60,000.00.

I will be in touch with you Monday and will advise you at once in the event the case is not settled and it is necessary to have Mr. Zola present at the trial, so that you might arrange for his expenses to be paid. As I previously told you, Mr. Zola informed me that he would not leave Miami until his expenses had been paid in full.

Very truly yours,

PATRICK, HARPER & DIXON

By: James T. Patrick

JTP/rab

EXHIBIT "G"

APPENDIX/252

6

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

October 5, 1972

OCT 10 1972 M.C.

Mr. David J. Golden
The Home Insurance Company
59 Maiden Lane
New York, New York 10038

Re: 081-A-584252
Lewis vs. Aaacon
D/A 5/7/70
Driver Wm. W. Beck
Vehicle 1968 Olds
Owner - Ray Dean Rust

Dear Sir:

I am returning to you the Interrogatories and Answers thereto in the Beck matter. The answer to Question 4 as prepared by your company's attorneys, does not accord with my understanding of the facts. It is my understanding that the definition of "insured" in the insurance policy issued to our company includes "any person while using the automobile and any person legally responsible for the use thereof, provided the actual use of the automobile is by the named insured....or with (its permission)."

It would appear that the insurance policy issued to Aaacon Auto Transport, Inc. by The Home Indemnity Company would cover the vehicle owned by Ray Dean Rust.

If my understanding is incorrect, please have the attorneys forward an explanation to me. It is my intention to cooperate fully. However, I cannot execute a document under oath that I believe to be erroneous.

Very truly yours,

Ralph J. Zola

RJZ:akg

Enclosures

EXHIBIT "A"

APPENDIX 1[illegible]

PATRICK, HARPER & DIXON
ATTORNEYS AT LAW
FIRST SAVINGS & LOAN BUILDING
HICKORY, N.C. 28601

BAILEY PATRICK
F. OWYN HARPER JR.
CHARLES D DIXON
JAMES T. PATRICK
STEPHEN M. THOMAS

P. O. BOX 218
TELEPHONE
328-8166
AREA CODE NO 704

November 7, 1972

Mr. Ralph McNatt
Home Indemnity Company
P. O. Box 2666
Charlotte, North Carolina

Re: Claim Number: 081 A 584,252
Jesse Wilson Lewis vs. William Nelson Beck, et al;
Alda Lewis vs. William Nelson Beck, et al

Dear Ralph:

Enclosed herewith is a copy of our letter to Attorney William Greene putting CNA on notice that we consider them the primary carrier. Actually that determination will depend on the exact wording of the "Other Insurance" clause in the policy you issued to Aaacon. It is becoming essential that we get hold of a copy of that policy or at least a specimen policy with the same clauses that were included in the Aaacon policy. These will probably be necessary to convince CNA that they are primary and may well be requested by the judge in the absence of any signed answer by Zola to the insurance Interrogatories.

This case has been set for trial at a two-week session of the Burke County Superior Court beginning December 4, 1972 and if it is not settled before then I am sure that it will be tried. As you can see, time is, therefore, of the essence. If answers to our questions are not forthcoming from Aaacon soon, we must meet directly with Zola and with other officers of Aaacon who have direct knowledge of the facts in this case. I have this morning listed seventeen question that we do not have the answer to and I am sure there are many more that would be suggested by the answers to the first set.

In Zola's letter of October 5 in which he refused to sign the answers we prepared, he seems to be quoting from a standard omnibus clause but such a clause is normally limited to a vehicle named or described in the policy itself. If that is, in fact, the way your policy with Aaacon was worded , there seems little reasonable

EXHIBIT "E-1"

APPENDIX 1064

argument that Beck was insured by that policy. Zola, as I understand it, is an attorney but is apparently playing ignorant. I believe, however, that for purposes of forcing him to (a) co-operate or (b) give us a defense of nonco-operation, we should spell out directly to him the reasons that Beck is not an insured. If you would like, I will be glad to do this but before I do I must again have a copy of the policy.

Yours truly,

PATRICK, HARPER & DIXON

By: Stephen M. Thomas

SMT/mic

Enclosures

Charlotte L/C Ralph McNatt

MAIL TO: Metro L/C

PERSON D Goeke

SUBJECT (INCLUDE POLICY OR CLAIM NUMBER, WHEN APPLICABLE) CY-A-584252 Lewis/Clarcon

PRODUCER LOCATION

DATE

MESSAGE Attached is sample policy jacket, with forms factual endorsements, as per your memo of 11-25

Remind our counsel that Zola will take any position designed to leave Home be the primary carrier the facts notwithstanding.

Can you persuade plf counsel to execute the judgment against Clarcon y San Antonio?

ORIGINATOR—PLEASE DO NOT WRITE BELOW THIS LINE SIGNED

REPLY We are more interested in joining with CNA in equal sharing a settlement now, rather than pursuing the present motion. Please negotiate!

Ralph

FROM Metro L/C SIGNED Dan Goeke 12/3/75

GNL-273 (F) 8/72 RETURN THIS COPY TO ORIGINATOR NO ADDRESS SLIP NECESSARY

EXHIBIT "J"

APPENDIX 1756

THE HOME INSURANCE COMPANIES

OFFICE MEMORANDUM

cc to 140 12/6/73

Date 12/6/73

To Mgr. Sherwood

Metro. Claim Department
(Field Office or Home Office Department)

From Charles Klumbach, Supervisor

At Metro. Claim
(Field Office or Home Office Department)

RE: File 081-A-570920
Insured: Aaacon Auto Transport, Inc.
Date of Loss: December 17, 1969
Claimats: Sagovia and Ranniko

On December 5, 1972 the previous supervisor, Mr. Daniel Golden, dictated a report converting the file to Current Reporting with his recommendations in regard to the reserve increases.

I will not go into great detail on this as the dictated report of Mr. Golden has not changed, the facts of the accident have not changed nor has the injury changed. The only thing that might have changed is the increase in the medical bills.

In regard to Mr. Hugh Sagovia who sustained a comminuted fracture of the right tibia and fibula requiring open reduction of the fracture, subsequently had difficulty with the casting and required further treatment. In addition, Mr. Sagovia is alleged to have sustained a 3/4" shortening of the lower extremity. His special damages to date are $2,600 for hospital bills; $1,200 physicians' services and $1,600 loss of earnings. There is also an additional expense of $215 for miscellaneous expenses, giving us a total of special damages between $5,000 and $6,000.

In regard to Ann Ranniko who sustained a very serious injury and almost died at the hospital, a careful review of the hospital record shows that she was comatose at the accident scene and almost died at the hospital. She sustained comminuted fracture of the pubis, comminuted fracture of the acetabulum and a loss of function of the kidney for a temporary period of time. She sustained a pulmonary infiltration of the left lower lung, massive and extensive hospitalization for follow-up work on the lacerated spleen. In addition there was a laceration of the liver and a fracture of the L-2 vertebra. She had several operations including an exploratomy laparotomy, a splenectomy and a drainage of the liver which required extensive hospitalization. Her special damages to date include $3,500 hospital fees; $2,300 physicians' services and a loss of earnings between $1,300 and $1,400.

I am therefore recommending that we try to settle this case rather than try it in the Court of Law. Please note our attorneys', Zepnick & Director, report of November 28, 1973 in which they outlined the injuries and special damages as I have done. You will also note the next to last paragraph in which our own attorneys do not have great faith in the position that we took in regard to looking to Allstate to take over the defense of our insured. As noted in

EXHIBIT "K-1"

APPENDIX [illegible]7

(2)

the file, Allstate Insurance Company has refused to take over the defense and has refused to make any offers on the file. This is not a case we would want to try in a Court of Law and set up precedents for other cases which we have in this office. In addition, we do not want to try this case, as if we did lose the verdict could be extremely excessive and we might be held in for bad faith.

As noted in my letter of November 28, 1973 to the plaintiff's attorneys, Fields & Zimmerman, I have sent a letter to them notifying them of the Excess Carrier as they had requested in their letter of November 5, 1973. The Excess Carrier has been put on notice all throughout the file and has been advised periodically regarding this claim.

I therefore am recommending that we request authorization for $25,000 on Hugh Sagovia and $25,000 on Ann Ranniko.

CK:hms

EXHIBIT "12"

FIELD MEMORANDUM

THE HOME INSURANCE INDEMNITY COMPAN

DATE 11-4-71 NOV 23

TO	Mr. James T. Patrick, Atty. Patrick, Harman & Dixon P.O. Box 15 Hickory, N.C. 28601
FROM	P.O. Box 2666 Charlotte, N.C. 2820

SUBJECT: [illegible] vs. [illegible]
081-A-554,252

MESSAGE:
Dear Jim,

Attached is the driving record of Beck which reflects only the 1 activity involved in an accident case.

Ralph L. [illegible]

cc: [illegible] Y/c

ORIGINATOR – DO NOT WRITE BELOW THIS LINE

PLY:

ATURE

DATE

3796(F)

[illegible] "L-1"

APPENDIX 59

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
DIVISION OF DRIVER LICENSES
TRANSCRIPT OF DRIVER RECORD

WILLIAM NELSON BECK
FIRST MIDDLE OR MAIDEN LAST

5730 SW 46 TER
ADDRESS

MIAMI 01 33155
CITY STATE ZIP

01-14-16 DOB
602 W M SEX
K132310 OLD DL NUMBER
A RESTRICTIONS
02 10 70 DATE DL ISSUED
OPERATOR LICENSE TYPE
01-72 DL EXPIRES LAST DAY OF MO.
1 WRIT 2 DRIV EXAMS
02-10-70 DATE PASSED

10-30-71 SEARCH DATE
237
B200934160014310 DRIVER LICENSE NUMBER
951 REQUESTOR

ACCIDENT, OFFENSE EFFECTIVE DATE	DISPOSITION OR REINSTATEMENT DATE	COUNTY OR STATE	CITY	COURT	ENTRY	DESCRIPTION				ID NUMBER	
05-07-70	06-12-70	N.C.			CONV-0.0 PTS	FAIL STOP, REND AID INV INJ/DEATH		1		2738	1
06-12-70					SUS-12.0 MOS	FAIL STOP, REND AID INV INJ/DEATH			1		1
						LICENSE OR STATEMENT IS ON FILE					

APPENDIX 1760

EXHIBIT "L-2"

IN COMPLIANCE WITH SECTION 322.201, F.S., I, C. W. KEITH, DIRECTOR, DIVISION OF DRIVER LICENSES, DEPARTMENT OF [illegible] SAFETY AND MOTOR VEHICLES, STATE OF FLORIDA, [illegible] CERTIFY THAT I AM THE CUSTODIAN OF THE [illegible] OF SAID DIVISION OF DRIVER LICENSES AND THAT [illegible] TRUE AND CORRECT TRANSCRIPT OF THE ABOVE NAMED LICENSEE'S DRIVING RECORD AS TAKEN FROM THE OFFICIAL RECORDS ON FILE IN THIS DEPARTMENT.

C. W. KEITH, DIRECTOR

DISPOSITION CODES
1 - GUILTY
2 - ESTREATURE
3 - FORFEITURE
4 - ADJUDGED DELINQUENT

ACTION CODES
1 - DEPARTMENT ACTION
2 - COURT ACTION

ACCIDENT CODE
Y - INDICATES ACCIDENT

RESTRICTION CODES
A. CORRECTIVE LENSES
B. OUTSIDE REARVIEW MIRROR
C. BUSINESS PURPOSES
D. EMPLOYMENT PURPOSES
E. DAYLIGHT DRIVING ONLY
F. AUTOMATIC TRANSMISSION
G. ACCOMPANYING DRIVER OVER 21
H. 1½ TON SINGLE UNIT VEHICLE
I. DIRECTIONAL SIGNALS
J. GRIP ON STEERING WHEEL
K. HEARING AID
L. SEAT CUSHION
M. HAND CONTROLS OR PEDAL EXTENSION
N. LEFT FOOT ACCELERATOR
R. INCLUDES FOLLOWING
  *1. DAYLIGHT DRIVING
  2. ACCOMPANYING DRIVER OVER 21 EXCEPT WHEN DRIVING MOTOR DRIVEN CYCLES. MOTOR DRIVEN CYCLES MUST BE LESS THAN 5 BRAKE H.P.
S. OTHER

*EXCEPTION: MAY OPERATE A MOTOR VEHICLE NIGHT TIME 60 DAYS PRIOR TO 18TH BIRTHD the rank-and-file, the dock workers will have a GAI amounting to 1,500 hours' pay, instead of 2,080 hours as in the past. Under previous offers, the GAI would have hinged on the amount of cargo moved through the port but the ILA was successful in insistence that longshoremen be assured of 1,500 hours of pay regardless of the quantity of cargo moved.

R. M. Calder, executive director of the port, said that an assessment of about $1 per ton will be needed to support the program.

The new local agreement also includes the first set of written work rules in a Boston longshore contract. The rules call for both the union and the BSA to recognize the need for "continuous and efficient" terminal operation.

AWO President Asks Ford To Expand Meeting, Stem 'Overzealous Regulation'

James R. Smith, president of the American Waterways Operators, believes that the forthcoming regulatory meeting at the White House should not be restricted to such independent agencies as the Interstate Commerce Commission, the Federal Trade Commission and the Federal Power Commission.

In a recent letter to President Ford, Mr. Smith, citing "the need to see that the business community is not strangled by overzealous regulation," said that many of the regular-line executive agencies in the federal establishment "exercise more day-to-day, direct regulatory control over the business community than do the independent offices."

Other Agencies Cited

Mr. Smith said the inland and coastal water transportation industry is increasingly concerned by the proliferation of regulation by various executive agencies including the U.S. Coast Guard, the Environmental Protection Agency, the Occupational Safety and Health Administration, the Corps of Engineers, and others.

The AWO president said the executive regulatory agencies need Presidential guidance in carrying out their missions, and that he hoped they would welcome such guidance. He said that guidance was necessary because "in too many instances, agencies of the Executive Branch, in a conscientious effort to do their job well, do it all too zealously and at great cost to the American public."

The AWO president said that "many current regulation being promulgated are not necessary, all are burdensome, most are expensive to comply with, and most are inflationary and ultimately add to consumers' cost."

He went on to say that "the waterway industry applauds the President's Executive Order requiring an inflation impact statement on major legislative or regulatory proposals." "However", he said, "most executive departments have conveniently defined themselves out of the need for inflation impact statements by their definition of the word 'major'."

Perhaps certain individual legislative or regulatory proposals are not themselves major, he said, but in the aggregate they are very "major" in terms of adding to this nation's inflationary spiral.

Truck and Shipper Claim Councils Agree To Arbitrate Cargo Claim Controversies

ATA Freight Claim Council and Shippers Claim Council To Form Non-Profit Transportation Arbitration Board to Settle Freight Claims, Cooperate in Other Problem Areas

by Robert M. Butler

In what is considered a significant stride forward in shipper-carrier relations, the National Freight Claim Council of American Trucking Associations has joined with the relatively young Shippers National Freight Claim Council in agreeing to establish a non-profit organization called the Transportation Arbitration Board (TAB) to resolve all cargo claim controversies.

That step capped actions taken at the NFCC's thirty-eighth annual shipper-carrier and membership meetings June 22-26 in the Fairmont hotel at New Orleans.

The meetings also were highlighted by a direct call from the shipper group for joint consideration of solutions to some other mutually pressing problems in the areas of refused freight, inspection procedures and in-transit damage.

Elected to lead the NFCC in the coming year as president was O.D. Morris, director—claims and security for the Strickland Transportation Co., Dallas. Serving with him will be E. A. Sierra, vice-president—claims and security of Ryder Truck Lines, Inc., Jacksonville, Fla., first vice-president, and Austin E. Hocklander, of the Yellow Freight System, Shawnee-Mission, Kans., second vice-president. As immediate past president, Arvid E Peterson, supervisor—loss prevention for the Briggs Transportation Co., Minneapolis, moved up to Board Chairman.

Approval of the establishment of TAB as a non-profit, autonomous body of both the NFCC and SNFCC came in the form of a motion presented by Mr. Sierra, who headed a committee that worked out the cooperative endeavor with the SNFCC. Stated the unanimously-approved motion:

"The (NFCC) committee be authorized to participate with the SNFCC and engage counsel to form a non-profit organization referred to as TAB for the purposes of settling claims between carriers and customers through the arbitration process."

Explaining the mechanics of the TAB program, Mr. Sierra said that in meetings in New York with SNFCC officials it was decided that 20 claim agents and 20 traffic managers would be selected. The list of 20 traffic managers would be submitted to the NFCC from which nine names, plus a chairman, would be selected to serve as a 10-man board to represent shippers. The names of 20 claim agents would be submitted to the SNFCC for similar selection, thus providing 20 arbitrators. These would be placed on a list and as claims were submitted for arbitration a man from the top of each list—one shipper and one claim agent—would be arbitrators to decide the claim.

Said Mr. Peterson in his keynote address on TAB: "Regarding the discussions with officers of the SNFCC to discuss the feasibility of an arbitration program:

". . . The results of this effort produced an outline of a proposed arbitration format and a definite name—TAB. The members of the SNFCC approved the planned program during their annual meeting in Feburary of this year. We are confident that you will also approve the arbitration plan and our two organization, SNFCC and NFCC, can commence with this extremely important program. . ."

Speaking on the same subject at the luncheon that day, William J. Augello, Jr., executive director and general counsel of the SNFCC, said:

". . . This novel approach to arbitration is founded on our conviction that two knowledgeable, unbiased claims experts, one from each side, can mediate 90 per cent of the claim controversies that exist today. If we are right, we'll have saved taxpayers millions of dollars annually in avoidance of another bureaucratic structure to intervene in our affairs. I personally hope the program is given a chance—we may never have another chance to 'do it ourselves.' . . .

Mr. Sierra later told *Traffic World* in an interview: "We feel that there is a way to settle disputed claims amicably and that the reason claims are usually disputed is usually a lack of understanding on the part of one side or both. We feel that arbitration will solve that dispute because it will bring out the facts that are not in argument. We think it will be rather difficult to sell this to the shipping public because they are not used to arbitration. Carriers are, and they have done it successfully for [illegible] years. We think that if we open our arms to them and show that the water is warm they just might join us.

"We think the over-all long-range effect will be the saving of money, as it costs money to adjudicate. This is expensive and we hope to keep the costs under $50. It will be done by ourselves, by knowledgeable people from the shipping public, and by claim agents from the carriers' side of the fence. In previous tests we have found that when these two people get together they always really find out they agree. It's when they go off somewhere in the boondocks that they disagree.

"We think that this organization, the transportation and arbitration board, can serve to bring shippers and carriers together, other than in these meetings here. We think that the published results of these arbitrations can serve to educate the newcomers on both sides of the fence and eliminate disputes in an ever diminishing number; hopefully eliminate complaints that now go to the ICC; eliminate economic recourse taken against the carrier because some guy is mad at what has been done to him; eliminate bad feelings, and eliminate criticism. We just think this is the way to go. We want to do it for ourselves; that is, the Shippers National Freight Claim Council and the NFCC.

Present plans are to form a non-profit organization that will be an autonomous organization of both of the councils. Excellent cooperation is being given by the SNFCC.

"Regulatory approval of the formation of

EXHIBIT #11

APPENDIX [illegible]

TAB is not required. That is already authorized by the U.S. Arbitration Act of 1925. It allows this to be done. We do plan to contact the executive body of ATA to inform them of what we are doing and expect to obtain their blessing."

In reply to some who thought that the project could be handled by the American Arbitration Association, Mr. Sierra pointed out that a recently conducted test program "fell flat on its face." Also, he said, the AAA's procedures are "rather cumbersome." He added: "I couldn't read their rules and tell how much it was going to cost to arbitrate. And if I couldn't, how could some drug store? Moreover, their arbitrators are not bound to give a reason for their decisions, nor are their decisions published. Therein lies my greatest objection . . . We need to settle our own disputes. . ."

Other Problems to Be Solved

Mr. Augello also called on the NFCC to consider solutions to these "troublesome problems we experience on a daily basis:

"(1) Existing rules on refused or unclaimed freight, and notification to the owners . . . the bill of lading contract urgently requires revision in these areas, even though such changes wuld entail a legislative act. If our two organizations could agree on the necessary changes, early passage of legislation would almost be assured.

"(2) Revision of consignee delivery and inspection procedures, and inspection of report forms is urgently needed, particularly in view of the concealed damage problems. Many of our members have expressed an increasing demand for educational material on claims in response to the increasing resistance on the part of some carriers to resolve claims formerly compromised voluntarily. As a result, some of your rules once considered sacred, have been questioned by our council. . .

"(3) The third and last suggested joint program between our councils is a nationwide campaign to awaken shipper/carrier employees to the tremendously costly and needless waste of our nation's resources, manpower and energy resulting from loss of, or damage to, our freight in transit. Much of the damage suffered is avoidable and preventable.

"An intensified education program is clearly needed. . ."

New DACA Directory Available

Free copies of a new directory listing services, facilities, service areas, operating authorities and specialties of the 42 members of Distributors and Consolidators of America may be obtained by writing DACA, c/o Wagner Cartage Service, Inc., 925 Wyoming St., Kansas City, Mo., 64101.

Trucking Industry Public Relations Coordinating Unit Now an ATA Council

The executive committee of the Americ Trucking Associations has approved a chang in the status of the Trucking Industry Pub Relations Coordinating Committee (TIPRC C), making it a council of the ATA. Th executive committee's action was announce the summer meeting of the committee, Ju 18, in Washington, D.C. The ATA said th the TIPRCC has served, since 1965, as medium for exchange of information betwe public relations professionals of motor carriers, state associations and the supplyi industry in promoting ideas and programs t further industry objectives.

"TIPRCC's change to council status," th ATA stated, "will enable it to contribute t industry goals in the same manner as ATA councils that deal with safety, accountin freight claims, sales and marketing, an operations.

"Other action taken by the executive committee included discussion of proposed data privacy legislation wheih would requi modification of personnel records procedures and data processing systems at a noticeable cost to carriers, and would have serious implications for motor carriers with respect to both safety and cargo security problems.

"Accordingly, the ATA will seek legislative

Water Transport Briefs

New Suez Service—A new breakbulk service from U.S. Gulf and Atlantic ports to the Middle East, via the Suez Canal, has been announced by Cargo World Wide, Inc., and Trans Ocean Trailer Executive Management. The new joint venture between TOTEM, managing company for TTT, Inc., and CWW, general agent for Cargo Lines, Inc., will feature the "Neuenberg," a year-old West German-flag vessel with heavy lift capability. The initial sailing of the 12,700 deadweight ton ship will be around July 22 from the Port of Houston. She will be at the Port of Baltimore around July 27. The vessel will make inducement calls at other Atlantic and Gulf ports. Cargo Lines currently provides regular service from New York to north European ports with three vessels.

Record Stone Cargo—The largest limestone cargo ever carried on the Great Lakes was transported recently by the "H. Lee White," a 704-foot self-unloader operated by the American Steamship Co., a subsidiary of the General American Transportation Corp. Thomas W. Burke, president of ASC, said the vessel, the largest ever built at the Sturgeon Bay, Wis., yard of the Bay Shipbuilding Co., carried a shipment of 35,256 net tons of limestone between Port Dolomite, Mich., and Conneaut, O., early in June. The previous record for that type of load, 32,824 net tons, also was made by the "White" last May.

Tulsa Port of Catoosa—The Tulsa Port Warehouse Co. has announced plans to build a steel distribution and fabrication warehouse at the Tulsa (Okla) Port of Catoosa. The new structure, said to be the first in the Tulsa area, will have 126,000 square feet of steel storage and fabrication space and will feature structural capability for 50 ton overhead cranes. Initially, it will have cranes of between 10 and 20 tons.

American Commercial Barge—ACBL/Western, Inc., a subsidiary of American Commercial Barge Line Co., and the Cajun Electric Power Cooperative have entered into a long-term contract for the large-scale transportation of low-sulphur Western Coal from St. Louis to a point near New Roads, La., on the Lower Mississippi River. Shipment of coal under the agreement at an initial rate of 1 million tons per year is expected to commence when the first of th generating plant's two units goes into service around August 1, 1979. The transportation rate is expected to reach 4 million tons a year b mid-1981 when the second unit of the plant is completed.

Ocean Shipper Honored—The National Maritime Council's "Shipper Appreciation Award" has been presented to the In Keepers Supply Co., Memphis, Tenn., for the company's extensive use of American-flag vessels for exporting.

Shipyard Furlough Ends—Seatrain Lines has begun recallin employes furloughed from its Brooklyn, N.Y., shipyard since mid January. The recall was made possible, Seatrain said, after its bank and the Department of Commerce reached final agreement on a $[illegible] million loan to enable the shipyard to complete two supertankers under construction. Besides the tankers, the yard recently was awarded a $20 million contract to build eight large ocean-going barges. The agreement provides for a loan 90 per cent guaranteed by th Commerce Department's Economic Development Administratio Three other loans were extended and a fourth was converted b Chase Manhattan Bank from a demand basis to a six-year term.

Italian Line—Anthony P. Mennella, president of Italian Lin Steamship Agency, has announced the appointment of Roberts Steamship Agency as midwest agent for the Italian Line's trans-Atlantic service. The line's trans-Atlantic fleet includes two ship that provide fortnightly container and other service between U.S. east coast ports and to the Mediterranean.

New Waterfront Facility—Acme Overseas, a division of Acme Fa Freight, has announced the opening of new waterfront facilities a Port Newark, N.J. Wayne Schmidt, general manager of Acme Overseas, said the new facility will consolidate LCL cargo for shipments from the New York area to Holland, Germany, Belgium, France, the United Kingdom, [illegible] and Switzerland.

40

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-C-7287
AAACON AUTO TRANSPORT, INC. - INVESTIGATION AND
REVOCATION OF CERTIFICATE

DOCKET NO. MC-C-7287 SUB NO. 1
AAACON AUTO TRANSPORT, INC., PETITION FOR
DECLARATORY ORDER

DOCKET NO. FF-359
AUTO TRIP USA, INC. FREIGHT FORWARDER APPLICATION

PETITION OF AAACON AUTO TRANSPORT, INC. AND AUTO TRIP USA, INC. TO REOPEN THE RECORD PURSUANT TO RULE 1100.101(b) OF THE COMMISSION'S RULES OF PRACTICE FOR THE RECEIPT OF FURTHER EVIDENCE

MORTON E. KIEL
Suite 6193
5 World Trade Center
New York, New York 10048

Practitioner for:
AAACON AUTO TRANSPORT, INC.
AND
AUTO TRIP USA, INC.

DATED AT NEW YORK, N.Y.
THIS 9TH DAY OF APRIL 1976

APPENDIX 1763

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-C-7287
AAACON AUTO TRANSPORT, INC. - INVESTIGATION AND REVOCATION OF CERTIFICATE

DOCKET NO. MC-C-7287 SUB NO. 1
AAACON AUTO TRANSPORT, INC., PETITION FOR DECLARATORY ORDER

DOCKET NO. FF-359
AUTO TRIP USA, INC. FREIGHT FORWARDER APPLICATION

PETITION OF AAACON AUTO TRANSPORT, INC. AND AUTO TRIP USA, INC. TO REOPEN THE RECORD PURSUANT TO RULE 1100.101(b) OF THE COMMISSION'S RULES OF PRACTICE FOR THE RECEIPT OF FURTHER EVIDENCE

Comes now Aaacon Auto Transport, Inc. and Auto Trip, USA, Inc., (hereinafter sometimes referred to collectively as "Aaacon" or as "petitioner") and submits this petition requesting that the Interstate Commerce Commission reopen the record in the above-captioned proceeding solely for the purpose of receiving in evidence certain material which arose subsequent to both the close of the hearings herein and the submission of Aaacon's prior petitions to reopen the record.

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LAW AND ARGUMENT

This additional petition to reopen the record pursuant to Rule 1100.101(b) of the Commission's Rules of Practice, is submitted so as not to burden the Commission and Administrative Law Judge with the time and expense required to hold additional public hearings. Petitioner has submitted additional evidence in affidavit and documentary form pursuant to the modified procedure provisions of the Rules of Practice. Petitioner is ready and willing to participate in further hearings at the Commission's discretion.

As has been heretofore noted, evidence discovered subsequent to the close of a proceeding before the Interstate Commerce Commission provides adequate grounds for the reopening of such proceeding. Thus, the Commission ought not to deny reopening where newly discovered evidence is to be presented. Tidewater Express Line v. U.S., 278 F.Supp.561 (DC Maryland 1968); Midwest Emery Freight System v. U.S., 295 F.Supp. 112 (DC Illinois 1968); Garett Freightlines v. U.S., 305 F.Supp 149 (DC Idaho 1969); Carolina Freight Carriers v. U.S., 307 F.Supp. 723 (DC No.Carolina 1969). Moreover, the Commission has held that it should consider new developments occurring subsequent to the close of a hearing. Burnett 88 MCC 452.

APPENDIX 765

Accordingly, consistency of application of administrative rulings requires that this petition to reopen these proceedings be granted. Dixie Highway Express v. U.S., 268 F.Supp. 239 (DC Mississippi 1967).

A brief statement of the evidence to be presented, an explanation of the non-cumulative nature of such evidence and an explanation of why such evidence was not previously adduced at the hearing, as required by Rule 1100.101 is as follows:

1. The Claims Practices of Aaacon Auto Transport, Inc. Compared with Other Carriers

In this proceeding, the Bureau of Enforcement has suggested, inter alia, that claimants and customers of Aaacon somehow receive inferior treatment concerning their claims when compared to the practices of other carriers. Yet no evidence was adduced concerning the practices of other carriers either within or without the driveaway industry. Conversely, Aaacon has maintained in these proceedings and in pleadings and papers heretofore had herein that its claims practices were both reasonable and proper, and that its customers and claimants were treated in a manner similar or superior to that of other similarly situated carriers. In this regard, Aaacon has asserted that the picture presented by the Bureau of Enforcement has centered on isolated, pre-selected cases. It is Aaacon's contention that the Bureau wrongly sought to suggest those cases were typical of Aaacon's procedures concerning claims paid, the grounds for denials of claims, and the amount of time spent in necessary claims.

These assertions by the Bureau of Enforcement are not only without foundation in fact, but a review of the schedules filed by carriers with the Interstate Commerce Commission for Quarterly reports of Freight Loss and Damage Claims, (Form QL&D), clearly supports Aaacon's position.

In this regard, Aaacon respectfully requests that the Commission take judicial notice of QL&D forms filed by Aaacon and by protestent Auto Driveaway moving the same type of commodities, to wit: used passenger automobiles, for the general public as does Aaacon. In this respect, Richard S. Birnbaum, Esq. has reviewed the QL&D forms filed by Auto Driveaway Company with the Interstate Commerce Commission. The claims experience of the auto driveaway companies moving used cars for individuals in secondary movements is thus compared to see whether or not the claims are treated swiftly, whether or not the claims are paid, whether or not any procedures utilized by Aaacon, such as arbitration, interferes with claims payments, as asserted by the Bureau of Enforcement, or whether Aaacon's claims procedures in fact facilitate claims payments as asserted by Aaacon.

As noted in the affidavit of Richard S. Birnbaum dated April 5, 1976, a comparison of figures clearly demonstrates that Aaacon's claims record is equal to and often superior to reporting auto driveaway companies.

This is not to denigrate the claims handling record of respondent Auto Driveaway Co. or, any other interstate carrier. Rather, the affidavit of Richard S. Birnbaum dated April 5, 1976 and the evidence contained therein demonstrates that Aaacon's claims handling practices, procedures and Aaacon's settlement and time within claims are settled are "reasonable" because they are equal to or, superior to that of other carriers similarly situated. Further, it is respectfully submitted that in no other interstate transportation other than driveaway, is the carrier required to operate the cargo during the course of transportation. In no other interstate transportation other than driveaway is it contemplated by the mode of transportation that the cargo will depreciate as a result of the transportation. Finally, in no other interstate transportation is the shipper less aware of the nature of the cargo tendered (the operational and mechanical nature of an automobile). Indeed as more fully documented below with regard to automobiles, the shipper has been kept in the dark by the manufacturers of the cargo. The affidavit of Richard S. Birnbaum dated April 5, 1976 also demonstrates that the assertions by the

Bureau of Enforcement that:

a. Aaacon has refused to settle or process claims;

b. Aaacon's procedure results in delay in settling claims, and

c. that Aaacon's claims procedures result in wrongful claims denials or reduced settlements

are without foundation in fact and are contradicted by the evidence contained in said QL&D reports.

The affidavit of Richard S. Birnbaum dated April 5, 1976, sets forth in its discussion of the QL&D reports that Aaacon has at all times complied with every Commission directive contained in the Code of Federal Regulations 49 CFR 1005 et seq. concerning claims practices and procedures. Accordingly, unless the regulations and rules concerning claims, practices and procedures are different for Aaacon than for other interstate carriers, this evidence clearly demonstrates that the charges by the Bureau of Enforcement -- that Aaacon does not comply with the Commission requirements -- is incorrect.

The evidence concerning the claims practices of Aaacon contained in the affidavit of Richard S. Birnbaum dated April 5, 1976 is noncumulative because it contains material not heretofore presented to the Commission concerning the claims practices of Aaacon, as summarized in QL&D report forms compaired with other interstate carriers. Such evidence was not previously adduced at the hearing because the QI&D report forms did not come into existence until after the close of the hearings and, further, there were until recently not available a sufficient number of reports from the Commission's files to make a meaningful comparison.

2. The Relative Liability of Aaacon and the Car Owners Insurance

Aaacon has maintained throughout these proceedings that the question of the relative liability of Aaacon's insurer versus the car owner's insurer is a complicated question of law.

Since these proceedings were commenced the position of Aaacon, that Aaacon is entitled to the benefit of any insurance effected upon the vehicle by the car owner, without limiting Aaacon's liability and provided that certain conditions are met, has been sustained by courts, both at the Federal and state level. In this regard, a recently published decision of Aaacon Auto Transport, Inc. v. Demshar, 312 So.2d 470 (DC Fla. 4th Dist.1975) specifically upholds the primary coverage of the car owner's insurance company as compared to Aaacon's insurer. This case is similar in result to the Seventh Circuit Court of Appeals in United States v. Auto Driveaway, 464 F2d 1380 (7th Cir. 1972).

Further, a recent discussion in the authoritative *ICC Practitioners Journal,* Volume 42, No. 6, page 689, et seq. (1975) reviews the relative liability of the car owner's insurance and the carrier's insurance, citing, inter alia, *Pacific National Insurance Co. v. Transport Insurance Co.*, 341 F2d 514 (8th Cir. 1965), which specifically upholds the liability of the car owner's insurance where the said liability arises from the acts of the driver, for which the carrier is derivitively liable. As noted in the *ICC Practitioners Journal* article, the reasoning of the Court of Appeals in that case is that inasmuch as the driver is an "additional insured" under the *car owner's* insurance, the car owner's insurance is primary. In view of the foregoing growing body of law in this matter, the assertion by the Bureau of Enforcement without one scintilla of support that Aaacon has wrongfully attempted to "shift liability to the car owner's insurer" is improper, groundless and contrary to law.

Additionally in the recent *Transport Indemnity Co. v. Rollins Co.,* (Washington Court of Appeals, Div. 1, October 14, 1975) reported at 1976 Federal Carrier Cases, para. 82,590, it was held that a car owner's insurance is available and applicable to damage occurring in an interstate transport. The Court therein specifically considered the question of primary coverage in light of endorsements required by the Interstate Commerce Code Sec. 315 concerning insurance coverage of carriers. The Court held, inter alia, that a BMC endorsement did *not* make the insurance company for the carrier a "primary" insurer and that the car owners insurance company was responsible to make payment to the carrier's insurer. This case is relevant and noncumulative to the issue of relative liability between carriers and shipper's insurer's which issues were raised in these preceedings. The evidence therein could not have been adduced prior hereto inasmuch as it was just decided and reported.

The foregoing material is noncumulative in nature because it sets forth for the first time Court holdings and a recent discussion in the ICC Practitioners Journal which did not heretofore exist. Said evidence was not adduced at the hearing because said discussions and cases were not available until subsequent to the close of the hearings.

3. Arbitration of Shipper Carrier Disputes

Aaacon has heretofore asserted in these proceedings that arbitration of shipper-carrier claims was lawful. Additionally, Aaacon has avered that inasmuch as the Congress of the United States itself has authorized the arbitration of claims concerning interstate transportation in the Federal Arbitration Act 9 U.S. Code Section 2 and made it specifically applicable to "interstate shipment of goods" H.R. Rep. No. 98 68th Congress 1st Session 1, additional authorization from any administrative agency was unnecessary.

In this regard, the affidavit of Richard S. Birnbaum dated April 5, 1976 indicates that such arbitration procedures of interstate shipper-carrier claims has been adopted by the Transportation Arbitration Board Inc. and annexes to his affidavit a copy of the procedure rules of that Board. According to articles reported in Traffic World Magazine and other periodicals of interest to the transportation industry, the Transportation Arbitration Board did not obtain Commission approval because it felt that such approval was unnecessary. As to the question of the commencement of arbitration proceedings it is to be noted that the Commission in Ex Parte 263, 340 ICC 515, 578 et seq (1972) has held that arbitration should be applied a) across the board to all shippers; b) in advance of disputes. This evidence is relevant both as to 1) the practice of other interstate carriers which evidences the reasonability of the acts of Aaacon; and 2) the question of the Commission's jurisdiction over authorizing arbitration of shipper-carrier disputes in light of prior Congressional authorization.

The evidence is non-cumulative in nature because it presents information concerning for the first time, arbitration practices by other carriers and shippers not heretofore available. The evidence could not be adduced at the hearing subsequent thereto.

4. The Existence of Inherent Defects In Automobiles About Which Shipper-Claimants Are Unaware

Aaacon has heretofore asserted in these proceedings that the cargo it is transporting, automobiles, often contain inherent defects which are unknown to shippers, but yet which often form the basis of claims situations. Evidence has heretofore been adduced of a "cover up" by the automobile manufacturers concerning defects in the automobiles effecting safety. Said safety related defects in the vehicles were, according to reports issued by the United States government and the car manufacturers themselves, often the cause of accidents of the type which gave rise to many of the claims situations presented by the Bureau of Enforcement in the instant proceeding.

Aaacon has asserted that in many instances as a result of the car manufacturer's cover up and as a result of the lack of familiarity of the general public with the operation and mechanical nature of automobiles, the car owner-shipper is unaware of the inherent defects in the cargo he is tendering. However, under Federal law, liability is placed upon the shipper for any inherent device defect in the cargo (whether or not he knew about said defects). *Eastern Motor Express v. Machsmayer*, 247 F2d 826 (2d Cir.1957).

While the fact is that many shippers do not know about inherent defects in their vehicles, said lack of knowledge does not relieve them of liability. Indeed, it would appear from the evidence heretofore adduced and the evidence presented herein, that the manufacturers of the cargo, i.e. the automobile manufacturers have entered into a campaign to deliberately to cover up the defects in vehicles.

Thus, the affidavit of Richard S. Birnbaum dated April 5, 1976 adduces evidence that laten defects in automobiles are often under "secret warranties" of which the car manufacturers fail to notify the car owners. A recent article in the New York Times of Sunday, January 11, 1976, which is appended to the affidavit of Richard S. Birnbaum demonstrates that only General Motors, but Ford as well, maintained a policy of not informing car owners of potential defects in the vehicles which have been uncovered. This evidence is highly relevant to the issues raised in the proceedings herein inasmuch as the claims of Slattery, Levine, Harrington, Raze, Clendenon, Singpurwalla, Moross, White, Flauntleroy, Whitney, Wolfe, Browder and Brown, interalia, involved claims for mechanical defects .

The evidence herein adduced is noncumulative in nature because it presents for the first time information concerning the failure of automobile manufacturers to notify the public of non-safety related defects in vehicles they sell. Said evidence could not be adduced at the hearing because it appeared only recently in a report printed after the close of the hearing herein.

CONCLUSION

The Commission should have before it in these proceedings all relevant evidence where, as in the instant case, the evidence is of an on-going nature, can only be discovered through litigation, concerns meetings and discussions between personnel of the Commission and insurance companies which were unknown to Aaacon, or which otherwise concerns matters germane to these proceedings. The relevant facts should be submitted to the Commission and where, as here, it is appropriate to reopen the proceeding, the proceeding should be reopened to receive such additional evidence into the record.

Respectfully submitted,

MORTON E. KIEL
Suite 6193
5 World Trade Center
New York, N.Y. 10048

Practitioner for Aaacon Auto
Transport, Inc. and Auto
Trip USA, Inc.

Dated at New York, N.Y.
this 9th day of April 1976

STATE OF NEW YORK)ss.:
COUNTY OF NEW YORK)

RICHARD BIRNBAUM, being duly sworn, deposes and says:

1. I am an attorney and make this affidavit in support of the petition of Aaacon Auto Transport, Inc. and Autotrip United States Inc., dated April 5, 1976 (collective "Aaacon") to reopen the record in Dockets MC-C-7287 Sub. No. 1 and F-F-359 respectfully.

2. As noted in prior affidavits dated January 10, 1975, and August 20, 1975 heretofore submitted I am fully familiar, as an attorney, with the facts surrounding the instant proceeding.

I. A Comparison of Claims Practices of Aaacon Auto Transport Inc. with Other Carriers

3. I have personally reviewed and inspected the reports of auto driveaway carriers filed with the Interstate Commerce Commission for Quarterly Loss and Damage Claims as required by 49 CFR 1005 et seq. The only reporting carriers in the automobile driveaway industry were Aaacon and Auto Driveaway Co. The following is a table which I have prepared from a review of record, of the number of claims paid

compared to the number of claims filed for all quarters from the second quarter of 1973 to the fourth quarter of 1975 (the last quarter for which comparative figures from Auto Driveaway were available from the Commission's files:

NUMBER OF CLAIMS PAID IN RELATION TO CLAIMS RECEIVED FROM QUARTERLY QL&D REPORTS

For the Quarter	Aaacon	Auto Driveaway
Second/1973	90%	57%
Third/1973	60%	37%
Fourth/1973	81%	69%
First/1974	67%	26%
Second/1974	64%	66%
Third/1974	64%	57%
Fourth/1974	68%	48%
First/1975	62%	35%
Second/1975	51%	36%
Third/1975	78%	41%
Fourth/1975	37%*	16%

*The dollar value of claims paid in the fourth quarter of 1975 represents over 58% of the dollar value of claims received in that quarter.

4. These documents clearly show that in practically every instance Aaacon has paid a greater percentage of claims filed by claimants for that quarter compared to Auto Driveaway. This does not denigrate Auto Driveaway's claims record in any respect, but is presented merely to show that the ~~acts and practices of~~ Aaacon Auto Transport, Inc.:

a. Comply with Commission regulations.

b. Are equal to or superior to those of other companies similarly situated.

5. Further, in this regard, the QL&D reports filed with the Interstate Commerce Commission indicate that at all times during the last three quarters of filing, i.e. April through December 31, 1975, Aaacon has no claims unsettled over 120 days. I have further checked with the Aaacon claims personnel who advise me that the current report to be filed (the first quarter of 1976) similarly indicates that there are no unsettled claims of Aaacon over 120 days.

6. It is respectfully submitted that this evidence, as well as the entire QL&D reports of Aaacon and similarly situated carriers, should be included in a Commission review inasmuch as they indicate:

a. whether, as the Bureau of Enforcement has alleged, claims practices of Aaacon have interfered with settlement of shipper claims: and

b. whether Aaacon's claims practices result in prompt settlement and payment of claims submitted in a very high percentage of cases.

7. The information contained in the foregoing figures is further relevant inasmuch as the Bureau of Enforcement has

raised the question of Aaacon's fitness as a result of its claims practices and procedures. Although the material submitted by the Bureau of Enforcement is now over six years old -- having been claims incidents occurring during 1969 and 1970 -- it is clear from a review of the foregoing that the claims practices of Aaacon at the present time and for the past number of years have been reasonable and have resulted in prompt determination of shipper claims. Indeed, the last two QL&D reports of Aaacon indicate that during the second quarter of 1975 Aaacon received 148 claims and processed 145 within 30 days. During the third quarter of 1975 Aaacon received 167 claims and processed 164 within 30 days.

II. The Question of Liability as Between Aaacon Auto Transport, Inc. and the Insurance Companies of Carowners

8. From the very inception of these proceedings, a question made much of by the Bureau of Enforcement has been the alleged unlawful use by Aaacon of the insurance carried by car owners on their vehicles with respect to the settlement of claims. During the proceedings, Aaacon brought to the attention of the Commission the decision of the Seventh Circuit Court of Appeals in United States v. Auto Driveaway, 464 F2d 1380 (7th Cir. 1972). Recently, the Florida State courts arrived at the same conclusion in the case of Aaacon Auto Transport Inc. v. Demshar, 312, So.

owners through breakdowns.

15. Thus, Aaacon is in the position of receiving for transportation automobiles which may very well have latent defects outside the knowledge of the owner thereof, and a fortiori, outside the knowledge of Aaacon.

16. Without repeating all the material in the news article, it is clear that the commodity transported by Aaacon may often contain inherent mechanical defects for which Aaacon cannot be responsible either as a matter of law or in simple equity. Eastern Motor Express Inc. v. A. Maschmeyer Jr., Inc., 247 F2d 826 (2d Cir. 1957). Yet these defects, about which the shipper is ignorant due to the manufacturer's policy of not informing the public thereon, may give rise to claims. Accordingly the contention of the Bureau of Enforcement that Aaacon is somehow at fault for its assertion of a defense arising from inherent mechanical defects, is without foundation at law or in equity.

V. Conclusion

17. Your deponent respectfully submits that the Commission should obtain this additional evidence by reopening these proceedings and upon said reopening, should accept the documents submitted herewith.

18. Wherefore, your deponent respectfully submits

that Aaacon's petition to reopen the record in this proceeding should be in all respects granted.

Sworn to before me this
5th day of April, 1976

[illegible]
Notary Public, State of New York
No. 41-4505124
Qualified in Queens County
Commission Expires March 30, 1975

Richard S. Birnbaum

AAACON AUTO TRANSPORT, INC., Appellant,

v.

Joseph DEMSHAR, Sr., and Liberty Mutual Fire Insurance Company, a Foreign Corporation doing business in Florida, Appellees.

No. 73-1143.

District Court of Appeal of Florida, Fourth District.

April 18, 1975.

Rehearing Denied May 30, 1975.

Action was brought against owner of automobile and its insurer to recover amount paid by insurer of automobile transportation company in settlement of claims arising from accident while automobile was being transported from Florida to Ohio. The Circuit Court for Broward County, Humes T. Lasher, J., entered judgment from which plaintiff appealed. The District Court of Appeal, Owen, C. J., held that under definition in owner's policy, automobile was not being used by a person in the automobile business at the time of the accident; and that under the "other insurance" clauses in their respective policies, owner's policy provided primary coverage and policy issued to transport company provided excess coverage.

Reversed and remanded.

1. Insurance 🔑146.6

Exclusionary clauses in liability policies are always strictly construed.

2. Insurance 🔑435.22(6)

Where owner's liability policy defined "automobile business" as meaning business or occupation of selling, repairing, servicing, storing or parking automobiles, accident which occurred while automobile was being transported from Florida to Ohio by company that was in the business of transporting automobiles was not within exclusion applicable where automobile was being "used by a person in the automobile business."

3. Insurance 🔑512.1(4)

Where two policies cover particular loss and each contains "other insurance" clause which purports to restrict or limit liability, if one policy contains a "pro rata" clause and other contains an "excess insurance" clause, effect is given to the latter.

4. Insurance 🔑512.1(4)

Where policy of owner of automobile and policy of company which was transporting automobile both covered claim arising from accident while automobile was being transported and both policies provided that coverage would be pro rata with respect to other valid collectible insurance where loss arose out of an owned vehicle but would be excess where loss arose out of use of a nonowned vehicle, owner's policy provided primary coverage and policy issued to transport company provided excess coverage.

Edna L. Caruso of Howell, Kirby, Montgomery, D'Aiuto, Dean & Hallowes, West Palm Beach, for appellant.

Frank E. Maloney, Jr., of Fleming, O'Bryan & Fleming, Fort Lauderdale, for appellees.

OWEN, Chief Judge.

Essentially, this suit is between two automobile liability insurance carriers to determine the extent of coverage, if any, provided under the policy issued by appellee to the owner of the automobile. Concisely stated, the primary question is whether the automobile was "used by a person in the automobile business" within an exclusion in the owner's policy; if coverage was not thus excluded, there is also presented the question of whether the coverage under the owner's policy is primary.

APPENDIX [illegible] 2

Appellee-Demshar insured his 1966 Pontiac automobile under a liability insurance policy issued by Appellee-Liberty Mutual Fire Insurance Company. That policy excluded liability coverage when the automobile was used by any person employed or otherwise engaged in the automobile business.

Appellant was in the business of transporting automobiles. Mr. Demshar contracted with appellant to have his automobile transported from south Florida to Ohio. A part of the contract price was for liability insurance furnished by the Aetna Casualty & Surety Company whose policy expressly provided liability coverage "with respect to any automobile while being delivered to a specific location", by appellant.

In furtherance of the contract, appellant employed one Snyder for the purpose of driving the car to Ohio. Before getting out of Broward County Snyder had negligently operated the vehicle so as to cause bodily injury and property damage to others. Aetna settled these claims under its policy. The present suit was filed by appellant for the use and benefit of Aetna to recover the amount of the settlement plus costs and attorneys fees.

We turn first to the question of whether Mr. Demshar's automobile was being used in an automobile business within the meaning of the exclusion. The case of Midwest Mutual Insurance Company v. Federal Insurance Company of New Jersey, Fla.App. 1974, 289 So.2d 760, involved an identically worded policy as here. There the court, reasoning that the business of transporting automobiles was a "business", exclusively concerned with "automobiles", held it was an "automobile business" within the meaning of the exclusion.

[1, 2] With due deference to our sister court, we disagree with the conclusion reached in the cited case for a simple but cogent reason. The policy issued by appellee, Liberty Mutual Fire Insurance Company, (as did the policy in the Midwest Mutual case, supra) defined "automobile business" as meaning "the business or occupation of selling, repairing, servicing, storing or parking automobiles." Exclusionary clauses in liability insurance policies are always strictly construed. Liberty Mutual undertook to state with specificity which activities only were included within its definition of "automobile business". Transporting automobiles is simply not included within such definition. The exclusion was not applicable in this case.

[3, 4] The policy issued by Aetna Casualty & Surety Company and the policy issued by Liberty Mutual Fire Insurance Company each contained a standard "other insurance" clause which, in essence and simply stated, provided that the coverage of the policy would be pro rata with any other valid and collectible insurance where the loss arose out of the use of an owned vehicle, but would be excess insurance over any other valid and collectible insurance where the loss arose out of the use of a non-owned vehicle. The loss here arose out of the use of Mr. Demshar's 1966 Pontiac automobile, an owned vehicle under the Liberty Mutual policy, but a non-owned vehicle under the Aetna Casualty & Surety Company policy. Thus, under the terms of the respective policies, the pro rata clause applied under the Liberty Mutual policy and the excess clause applied under the Aetna Casualty & Surety policy.

Where two separate insurance policies cover a particular loss and each contains "other insurance" clauses which purport to restrict or limit liability, if one of the policies contains a "pro rata" clause and the other contains an "excess insurance" clause, effect is given to the latter clause. Allstate Insurance Company v. American Casualty Company of Reading, Pa., Fla. App.1967, 200 So.2d 587; 8 Appleman, Insurance Law and Practice, § 4914 (1962); 18A Fla.Jur., Insurance, § 941; Annot., 76 ALR2d 502 (1961). In this case and on these facts, the policy of appellee, Liberty Mutual Fire Insurance Company, provided

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Company, provided

primary coverage and the policy issued by Aetna Casualty & Surety Company provided excess coverage.

The judgment is reversed and this cause remanded for further proceedings not inconsistent herewith.

Reversed and remanded.

MAGER and DOWNEY, JJ., concur.

STATE of Florida, Appellant,

v.

David George EICHER, Appellee.

No. 75-179.

District Court of Appeal of Florida,
Fourth District.

May 16, 1975.

Interlocutory appeal from Circuit Court, Orange County; William C. Gridley, Judge.

Robert L. Shevin, Atty. Gen., Tallahassee, and Stephen R. Koons, Asst. Atty. Gen., West Palm Beach, for appellant.

Kirk N. Kirkconnell, of Muller & Kirkconnell, Winter Park, for appellee.

PER CURIAM.

The order granting defendant's Motion to Suppress is reversed upon authority of State v. Crisp, 307 So.2d 454 (4th D.C.A. Fla.1975); State v. Niles, 307 So.2d 455, 4th D.C.A. Opinion issued February 7, 1975 and State v. Wolff, 310 So.2d 729, Supreme Court Opinion issued February 26, 1975.

Reversed.

OWEN, C. J., and WALDEN and DOWNEY, JJ., concur.

SEARS, ROEBUCK & COMPANY, a Foreign Corporation authorized to do business in the State of Florida, Appellant,

v.

Florence MOOMEY and H. D. Moomey, Individually and as husband and wife, Appellees.

Nos. 74-1172, 74-1659.

District Court of Appeal of Florida,
Fourth District.

April 25, 1975.

Rehearing Denied May 30, 1975.

Consolidated Interlocutory Appeals from Circuit Court, Broward County; Russell E. Seay, Jr., Judge.

Reed A. Bryan III, McCune, Hiaasen, Crum, Ferris & Gardner, Fort Lauderdale, for appellant.

Harry G. Carratt, Morgan, Carratt & O'Connor, Fort Lauderdale, for appellees.

PER CURIAM.

Sears, Roebuck & Company, via these two consolidated interlocutory appeals, seeks to set aside a default judgment entered against it. Being unsuccessful in the trial court, it appeals and presents seven points. We have considered each in the light of argument and all appellate advices. As much as we are dedicated to the proposition that where possible issues should be adjudicated upon the merits, we are unable to find legal error or any basis for reversal. Service of process was, in fact, made and it had actual notice of the proceedings. The complaints of Sears are either lacking in merit or else of some small moment as to constitute harmless error.

Affirmed.

OWEN, C. J., and WALDEN and MAGER, JJ., concur.

A3

TRANSPORTATION ARBITRATION BOARD, Inc.

1625 O Street, N. W., Washington D. C. 20036

ARBITRATION PROCEDURE

1. ARBITRATION AGREEMENT

Whenever a carrier and claimant are agreeable to submit a freight claim to arbitration by the Board under the terms and conditions set forth herein, they shall execute a TAB Arbitration Agreement in the form prescribed by the Board of Directors. The parties shall submit the executed agreement and their checks for filing fees to the Secretary of the Corporation to initiate arbitration procedures.

2. PARTIES' PRESENTATIONS

Within thirty days after the execution of an arbitration agreement, the claimant shall transmit its original claim file and brief to the carrier. The original file shall include all evidence in support of claimants case.

Within thirty days of receipt of the file, the carrier shall submit its evidence and a reply brief, if any, to the claimant.

Within fifteen days of receipt of the carriers evidence and brief, the claimant may submit a rebuttal brief, if any, to the carrier providing that the rebuttal brief deals only with evidence and facts previously a part of the file and does not add any new evidence.

Simultaneously, the claimant shall file with the Secretary the original claim file and all briefs and evidence.

3. COPIES AND FORM

All briefs submitted to the Secretary shall be in triplicate. Only one copy of the claim file, carrier's evidence and claimant's rebuttal evidence need be filed with the Secretary. Parties desiring to retain a copy of the original evidence submitted by either party shall make such reproductions at its own expense. One copy of all briefs shall be furnished to the opposing party. A copy of all communications sent by any party shall be served on the opposing party.

All documents submitted must be typewritten, single spaced, on paper not exceeding 8 1/2" by 11", except that larger exhibits may be filed if they are folded to 8 1/2" by 11". All documents must be arranged chronologically and numbered consecutively.

4. BOARD PROCEDURES

Upon receipt of a duly executed arbitration agreement, filing fees and the claims file and briefs of the parties as specified herein above, the Secretary shall assign a case number and acknowledge the receipt of the pleadings to the parties, furnishing the case number assigned.

EXHIBIT "B1

APPENDIX 1786

The Secretary shall select one arbitrator from the top of each council's list of active arbitrators and assign the case to those arbitrators selected, unle the Secretary is of the opinion that either arbitrator is a party to the cla has a conflict of interest or such assignment will be in violation of the co of ethics. In either of these instances, the case will not be assigned to suc arbitrator but will be assigned to the next arbitrator appearing on the activ list.

Any arbitrator may disqualify himself from adjudicating an assigned case, without explanation.

The Secretary may be requested by either arbitrator to obtain whatever additional information, documents or explanation is deemed necessary for the disposition of the assigned case. Requests from the arbitrators to the Secretary shall be in writing and all such communications will be directed to the Secretary with a copy to the other arbitrator. No such communications or requests, either orally or in writing, shall be directed to the parties.

The Secretary of the Corporation shall transmit the claim file, all evidence and the briefs to the first arbitrator for review and copying whatever portions of the file is deemed necessary. The original file shall then be forwarded to the second arbitrator. The arbitrators shall then communicate by mail, telephone or in person to adjudicate the case.

Within thirty days of receipt by the first arbitrator, the team shall submit its decision to the Secretary of the Corporation. If additional time is required an additional period not longer than thirty days may be granted by the Secretary for good cause. In the event disposition can not be made within sixty days of receipt of the file by the first arbitrator, the team shall return the file to the Secretary and request its reassignment.

the selection of the first arbitrator by the Secretary shall be from the SNFCC panel for the first case, from the NFCC's panel for the second case and on a rotating basis thereafter. After agreement by the team for the disposition of the case, the second arbitrator shall be responsible for writing the unanimous decision of the team. All decisions shall include findings of essential facts, contentions of the parties, the team's decision and an award of damages which may include the cost of arbitration.

In transmitting the decision of the team, the original claim file shall be returned to the Secretary. The Secretary shall mail a copy of the unanimous decision to all parties and return the original claim file and briefs to the parties involved.

The Secretary shall cause to be prepared a subject index of cases and decisio for periodic publication. TAB will by subscription furnish copies of arbitrat decisions to non-members of SNFCC/NFCC subject to a fee to be established by the Board.

5. DEADLOCKED DECISIONS

In the event the arbitration team can not reach a unanimous decision as to liability or damages, each arbitrator shall write a separate opinion and su

B2 APPENDIX /

same along with a single statement of facts and contentions of the parties, if possible. The Secretary shall forward the entire file consisting of the original claim file, the carrier's evidence, all briefs and the first team's decisions to the next team of arbitrators selected from the active lists pursuant to the procedures outlined hereinbefore.

If the second team reaches a unanimous agreement, the procedures outlined above shall be followed by the arbitrators and the Secretary. If the second team is unable to reach a unanimous decision, the Secretary shall so notify the parties, return the original claim file and evidence to the respective parties without the decisions of either team. The Secretary shall also execute a release of the parties from the arbitration agreement and furnish both parties with a copy of same.

6. METHOD OF TRANSMITTAL

All transmittals of original claim files and original documents by any of the parties shall be by certified mail, return receipt requested. All other transmittals shall be by first class mail.

7. COMPUTATION OF TIME

The computation of time for the purposes set forth hereinable shall begin from the day after the period begins. If the expiration of time falls on a Saturday, Sunday or National Holiday, the time shall expire on the first day after the expiration of such days. Documents postmarked on or before the last day of the specified time periods shall be deemed to be in compliance with the time limits set forth herein.

ARTICLE VI - EFFECT OF ARBITRATION

1. TIME LIMITS FOR INSTITUTION OF SUIT ON CLAIMS

In the event a unanimous decision is not reached under the arbitration proceedings described herein, the claimant may pursue its legal remedies. The submission of a claim to TAB Arbitration Procedures does not toll the time limits for institution of suits as provided in Section 20 (11) of the Interstate Commerce Act.

2. UNANIMOUS DECISIONS

Unanimous decisions of arbitrators shall be binding upon the parties on all issues contained in their decision, including the award of damages and costs.

3. REVIEW BY TAB

There shall be no appeal of an arbitration award to the Transportation Arbitration Board except for violation by the arbitrators of Article VIII, Code of Ethics. Any party may submit an appeal to the Secretary of the Corporation by petition to consist of not more than two pages, single spaced, setting forth the acts of the arbitrators alleged to have been improper. A copy of the petition shall be served upon the opposing party and a reply to the petition may be filed within 30 days.

The Co-Chairmen shall jointly consider petitions for review. In the event they agree that an improper act has been committed, they shall certify that fact to the Board of Directors for appropriate disposition.

CODE OF ETHICS

1. STANDARDS OF ETHICAL CONDUCT

All persons participating in proceedings before the Transportation Arbitration Board, including arbitrators, litigants and their duly authorized representatives, shall adhere to the ethical conduct required of such persons to promote the well being of Transportation Arbitration Board, and are specifically bound by the Code of Ethics of Transportation Arbitration Board as shown in Appendix A of these By Laws.

2. EX PARTE COMMUNICATIONS

No person who is a party to or agent of a party shall submit any ex parte communication, either written or oral, concerning the merits of the proceedings to any arbitrator, director or officer of the Transportation Arbitration Board.

No arbitrator, director or officer of the Board shall invite or knowingly entertain any prohibited ex parte communication. Nor shall he accept or solicit compensation in any form from any of the parties to the proceedings before the Board, except as authorized herein.

EXHIBIT "B4"

Article from Sunday New York Times, dated January 11, 1976
Section 3 pages 1 and 2.

Detroit's Blunders,

Vegas Overheat, Fords Rust, Owners Complain

By JERRY FLINT

When an automobile company makes a mistake, it's likely to be a big one, as in the Corvair controversy or the recall of millions of cars for safety defects in recent years. And lately there have been some big ones indeed. For example:

● The Vega engine disaster. The General Motors Corporation now warranties the engines of its small Chevrolet Vega automobiles for five years or 60,000 miles, the longest warranty in the industry. The reason is that the engines on tens of thousands of the early production models were defective, and the reputation of the car was in danger.

● The rusting Fords. In the early 1970's, cars produced by the Ford Motor Company were rusting so fast that the company was forced to pay for body repairs. But, in what's become something of a consumer issue, Ford didn't tell car owners, or even dealers, that it was willing to pay.

● The whale and the transmission. When General Motors came up with a new transmission fluid — which didn't use its old whale oil ingredient — transmissions began to go in thousands of cars.

● The easy-to-steal Fords. The ignition locks on Fords are so easy to manipulate that in some cities, where the word's gotten round, the bulk of stolen cars seem to be Ford-made. Ford will put better ignition locks in future cars, but so far is not helping today's victims.

There's one big difference between these problems and the defects that triggered auto recalls and got great publicity in the past: the new problems don't involve safety. They may cause a breakdown, they may cost an owner hundreds of dollars or a manufacturer millions in repair bills, but they aren't policed by Government agencies.

What's more, the built-in defect might not show up until a couple years after the car was bought and after the warranty had expired. That raises the question of just how long a manufacturer's responsibility lasts. And, considering the testing that's carried on before Detroit offers a new car to the public, there's also the question of how such goofs slip by.

Cost consciousness may be behind some of the million-dollar mistakes. The Vega engine failures, for example, were tied to two problems. The first was the failure of a specific part, a head gasket (a metal gasket between the iron cylinder head and the aluminum engine block). The second was the engine's tendency to suffer from overheating. A former G.M. official who once headed a car division and was privy to all Vega planning recalls that when the car came out as a 1971 model it was as an import fighter, and the price was held to around $2,000.

"There was no way they could make money on that car," he said, and so the cost cutters began chiseling, replacing the planned stainless steel gasket and "taking copper out of the radiator," meaning reducing the radiator and engine cooling capacity.

At Ford, the rust problem is blamed on an unexpected increase in the use of salts to melt snow and ice on highways, but a Ford man admitted that investigation showed that some of the paint coatings were too thin. "Maybe the paint engineer was saving a penny," he said.

In some cases, the underside protective coatings were missing. "It should have been caught by inspections, but," he said with a shrug, "you're always going to miss something."

The problem of responsibility is just as complicated.

Today's warranties generally run a year or 12,000 miles.

"Is there a latent defect, something that will show up during the useful life of the car?" asks Clarence Ditlow 3rd, who heads the Center for Auto Safety, a Washington-based consumer group connected to Ralph Nader. "If there is, the manufacturer has the responsibility to disclose and fix it," he insists.

Exhibit "C"

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on a Grand Scale

even if a car is two or three or four years old.

Mr. Ditlow is particularly irked by what he calls the "secret warranties" — car makers call them "service policies" — under which the repairs may be made on cars two or three or four years old but owners aren't notified about potential troubles.

The troubled aluminum engine of early-model Vegas.

"That rewards the consumer who gripes the loudest," says Mr. Ditlow, but not the others.

"Cost isn't the factor," said John Bates, G.M.'s service manager. "Sure we don't want to spend the money" repairing cars that have 20,000 or 30,000 or 40,000 miles, he added, but the company accepts the responsibility for built-in defects and has had 60 such "service policies" or extended warranties since 1966.

About 12,000 owners of 1973 and 1974 models received new or rebuilt automatic transmissions because of the [illegible] oil problem he noted. But how are customers to know G.M. will pay if G.M. doesn't tell them?

"All of our dealers are notified," he said. "I don't know of any complaints they haven't taken care of." And if an owner of a two-year-old car, past the normal warranty, had his [illegible] transmission fixed without going back to his dealer? "The radiator repair shops were aware of it," he said—[illegible] notify all independent radiator repair shops of such troubles.

"If they do the work, we'll refund it" to the customer, he said.

Of course, some customers complain that dealers aren't too sympathetic.

Larry Mosher, a Washington newspaper reporter, said his 1972 Vega needed a quart of oil every 100 miles or so by 36,000 miles. When the trouble began, he took it to a Chevrolet dealer who said the cylinder walls didn't bear the marks of overheating or "scoring" that would have entitled him to a new engine block under a special engine replacement offer on the troubled Vegas.

He spent about $200 on repairs, he said, but the problem worsened. He took it in again.

"The dealer told me the block was scored. 'Good,' I said. Now I can get a new block.' He said no, Chevrolet had changed the criteria. I said, 'You mean they've changed the rules without telling the owners?' He said, 'That's correct'."

But a Ford spokesman says the auto makers are generous in fixing cars that are past their 12,000-mile warranty. "This is our own charity," he insisted. "We've got no obligation beyond the warranty. We do this for good will."

If the Government should attempt to regulate such good deeds, "they'll kill the goose," he argued. The companies are also afraid that publicly telling owners that their old cars may have a defect would result in a rash of demands for free repair for ordinary wear and tear.

G.M.'s troubles with the Vega probably exemplify the worst type of mechanical blunder, and as good an effort as the industry ever made to do right by its customers.

"We knew we had a problem," says Bernie Ernst, chief Vega engineer at Chevrolet. He admits he couldn't go to a cocktail party without being button-holed by

Continued on page 2

EXHIBIT "C-2"

APPENDIX 1701

Detroit's Big Blunders

Continued from page 1

a Vega complainer. He believes 10 to 15 percent of the engines in the first two years of production were defective—and that could be around 90,000 cars.

G.M. won't say what it has spent to correct the problem. But one G.M. man says the repair bills in the Detroit zone alone ran to $900,000, and tied to Mr. Ernst's estimate, this indicates a $20 million -$30 million expenditure. Now, G.M. says, the Vega engine is fine, and the new 60,000-mile warranty is proof of G.M.'s confidence.

"It is conservatively estimated that less than 0.05 percent (or 5 of 10,000) of current and future model Vegas will experience any sort of damage due to over-temperature operation," the company says.

"Vega is no longer a dirty four-letter word," Rudy DeMumbrum, a Chevrolet official told Texas used-car dealers who were complaining about problems with the older models. Some owners and consumer groups are yet to be convinced, however.

Chevrolet explains that back in 1971 one supplier's head gaskets were inferior and often ruptured, allowing engine coolant to leak, which meant overheated and ruined engines. In addition, if the Vega engine ran short of coolant it was likely to overheat and could be ruined without the complication of the poor head gasket.

When G.M. recognized the problem, it put in a new gasket, told dealers to install coolant recovery systems on the '71 and '72 Vegas and made such kits standard on later Vegas. Then G.M. sent Vega owners a booklet that noted they could have a recovery kit installed free. Later, Chevrolet added an engine overheating warning light, and modified some engine parts.

But there were thousands of complaints and in mid-1974 Chevy wrote to Vega owners offering to repair heat-damaged engines, to pay owners back for work done before the policy was announced, and even to replace engines with up to 50,000 miles on them whether or not the owner had bought the car new.

Critics camplain that what G.M. did not tell owners was that the added protection ran out at 50,000 miles.

Scored cylinder walls or heavy oil consumption had apparently been considered evidence enough of the overheating condition. But by mid-1975, Chevy had tightened the rules, telling dealers that many engines were being replaced unnecessarily. There had to be "excessive" block deck drop, or roughly, a warped engine block, to entitle an owner to a new engine.

Some organizations and owners complain that the engine overheats naturally, ruins [illegible] stem seals and burns oil. Replacing the seals parts could cost owners $50 or more. G.M. denies any natural overheating problem exists.

"Right now the main problem is oil," complains Patrick MacElderry, a Philadelphia policeman who has formed a group of disgruntled Vega owners. He even stops Vega owners on the street to tell them about problems they may run into.

He says he hears from owners who have to put in a quart of oil a day but he also admits he turned down a G.M. offer of a replacement block because the company asked him to pay $[illegible] for new fluid and hoses and minor parts.

Why weren't the problems caught in all the Vega testing?

Mr. Ernst of Chevrolet is puzzled himself. In all the millions of miles of testing "we never failed an engine due to overheat," he said. Since the Vega storm, he said, G.M. has been trying to improve its testing.

Mr. Bates of G.M. also notes that the troublesome transmission fluid, aimed at lasting longer and eliminating the use of oil of the endangered sperm whale was tested for [illegible] million miles without any trouble.

The problem was that the new fluid somehow—G.M. still isn't certain now—corroded the fittings of a cooler in the radiator tank which meant the fluid could enter the cooling system or coolant could run into the transmission, ruining the transmission. More silver in the fitting solder solved this problem and better fluids are coming, he said.

Ford, meanwhile, has paid partially or fully for repairing rust damage on 70,000 of its 1969-72 models. All of the cost was paid on damage if a car was less than two years old, with less absorbed as the car got older. The limit was 50 percent of the cost for cars up to four years old and having less than 50,000 miles. The company insists the problem was largely confined to cities such as Pittsburgh and Cleveland where corrosive salts were heavily used in winter.

But reporters found owners who said that Ford refused to help them with the problem when they complained. And unlike G.M. with its Vega troubles, Ford made no effort to tell owners they might have the problem.

The theft problem with Fords is twofold. First, the Ford ignition keyhole is a bit bigger than those of competitors, and using a "slammer," a tool favored by car thieves, the steering column lock can be pulled out 10 to 15 seconds faster on Ford's than on other makers. The bigger problem is that there's an even easier way to steal a Ford—so easy that Ford officials ask that it not be mentioned lest thievery be encouraged.

A Federal Bureau of Investigation report covering two months in 1974 showed that of 9,500 car thefts counted, 48 percent were Ford-made, even though Fords account for only about one-fourth the cars sold in the nation. In some cities, things were far more lopsided. Baltimore's Ford total was 67 percent of car thefts; Boston's 72 percent and Detroit's, 81 percent in the F.B.I. report.

Ford is phasing in new locks and "there is a possibility of retrofit," meaning putting better locks on older cars, says Herbert Misch, a Ford vice president.

Mr. Ditlow of the Center for Auto Safety says he's taken up the new kinds of troubles with the Federal Trade Commission. They are "on the backburner," he admits, but he remains convinced that the "secret warranty" issue and the problem of fixing non-safety defects will attract increasing attention.

"We struck a very sensitive nerve," he said.

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EXHIBIT "C3"

Served April 19, 1976

M-12765

INTERSTATE COMMERCE COMMISSION

No. MC-C-7287[1]

AAACON AUTO TRANSPORT, INC.—INVESTIGATION AND REVOCATION OF CERTIFICATE

Decided April 7, 1976

1. In No. MC-C-7287, respondent found to have engaged in unjust and unreasonable practices in violation of sections 20(11), 219, and 216(b) of the Interstate Commerce Act, and to have operated unlawfully beyond the scope of its authority set forth in certificate No. MC-125808 (Sub-N. 1), in violation of section 206(a) of the act. Cease and desist order entered.
2. In No. MC-C-7287 (Sub-No. 1), petition seeking an interpretation of a restriction contained in certificate No. MC-125808 (Sub-No. 1), denied.
3. In No. FF-359, on further consideration, applicant found to have failed to demonstrate that it is a qualified applicant, or that its proposed operation will be consistent with the public interest and the national transportation policy. Application denied.

Philip M. Browning, Jr., John J. Charvhas, John F. Curley, Stuart B. Robbins, and *Joseph F. Walker* for Bureau of Enforcement.

Morton E. Kiel, Paul Zola, and *Ralph Zola* for respondent, petitioner, and applicant.

Dellon E. Cooker, Eugene C. Ewald, Wilmer B. Hill, Daniel B. Johnson, Marshall Kragen, and *Curtis F. Wagner* for protestants and interveners.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, GRESHAM, AND CLAPP

MURPHY, *Commissioner:*

Exceptions to the initial decision and recommended order of the Administrative Law Judge, embracing a request for reopening the proceeding for further hearing and to receive new evidence, and for oral argument and/or hearing de novo, were filed jointly by respondent-petitioner and applicant, and replies thereto were filed

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[1] Also embraced are No. MC-C-7287 (Sub-No. 1), *AAACon Auto Transport, Inc.—Petition for Declaratory Order* and No. FF-359, *Auto Trip USA, Inc., Freight Forwarder Application.*

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separately by this Commission's Bureau of Enforcement, Auto Driveaway Company, and the United States Department of Defense, and jointly by F. J. Boutell Driveaway Co., Inc., and Nu-Car Carriers, Inc., and by National Automobile Transporters Association (NATA), Automobile Transport, Inc., Baker Driveaway Company, Inc., Dealers Transit, Inc., Kenosha Auto Transport Corporation, M & G Convoy, Inc., Gate City Transport Co., and Square Deal Cartage Co.

In No. MC-C-7287, by order dated March 18, 1971, the Commission instituted an investigation pursuant to sections 204(c) and 212(a) of the Interstate Commerce Act, into and concerning the motor carrier operations and practices of AAACon Auto Transport, Inc., with a view to determining whether AAACon has been and is performing operations not authorized by its Certificate No. MC-125808 (Sub-No. 1), in violation of section 206(a) of the said act, and the terms, conditions, and limitations of said certificate; and whether AAACon has been and is engaging in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in violation of section 216(b) and sections 219 and 20(11) of the act, and to issuing such orders and taking such other and further action as to the facts and circumstances may appear to warrant. The Commission's Bureau of Enforcement was directed to participate

In No. MC-C-7287 (Sub-No. 1), on June 21, 1971, AAACon filed a petition for a declaratory order, seeking clarification of a restriction in its Certificate No. MC-125808 (Sub-No. 1), which restricted the authority contained therein against the transportation of traffic moving to automobile dealers. By order of division 1, entered July 8, 1971, the petition was designated for oral hearing on a consolidated record with No. MC-C-7287.

In No. FF-359, by application filed December 11, 1968, as amended, Auto Trip USA, Inc., of New York, N.Y., seeks a permit under section 410 of the act to operate as a freight forwarder, in interstate commerce, through the use of facilities of common carriers by railroad, express, water, or motor vehicle, in the transportation of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States. By report and order of division 1 at 336 I.C.C. 570, dated August 25, 1970, applicant in No. FF-359 was granted authority to operate as a freight forwarder, (1) of used passenger automobiles, and (2) of baggage and personal effects moving with used passenger automobiles, in driveaway service, between points in the United States (except Alaska and Hawaii), restricted (a) to the transportation of traffic moving in freight forwarding service and (b) against the transportation of traffic (i) moving on Government bills of lading, or (ii) moving to automobile dealers. By order dated May 4, 1971, the Commission, Appellate Division 1, reopened the proceeding in No. FF-359 for further hearing solely on the question of applicant's fitness and directed that it be handled on a consolidated record with the proceeding in No. MC-C-7287. It further directed the Commission's Bureau of Enforcement to participate in No. FF-359.

Hearing was held on a consolidated record in the three instant proceedings. Appearing as protestants and/or interveners in the various proceedings were the following parties: National Automobile Transporters Association; Automobile Transport, Inc.; Baker Driveaway Company, Inc.; Dealers Transit, Inc.; Kenosha Auto Transport Corporation; M & G Convoy, Inc.; Gate City Transport Co., Square Deal Cartage Co.; F. J. Boutell Driveaway Co., Inc.; Nu-Car Carriers, Inc.; Auto Driveaway Company; the United States Department of Defense; and this Commission's Bureau of Enforcement (Bureau).

The Administrative Law Judge recommended that a cease and desist order, as set forth in the appendix to this report, be entered. He found, *inter alia,* that respondent AAACon has consistently, knowingly, and deliberately pursued a course of arbitrarily denying just damage claims filed against it; that it has impeded the settlement of any and all claims by engaging in devious and blatant obstructionist tactics in order to avoid settling claims; that it has employed a "bill of lading agreement" in dealing with its shippers which differed in significant respects from the uniform bill of lading incorporated in its filed tariffs, all to the detriment of its shippers; and that it has held out to the general public a type of service which it did not actually perform. In addition, he found that the evidence further demonstrates that respondent has been, and is performing operations not authorized by its certificate in No. MC-125808 (Sub-No. 1), including the transportation of repossessed, stolen, or abandoned used passenger automobiles moving in driveaway service to points in New York, California, and Florida, and in violation of a condition in its certificate restricting the authority granted therein against the transportation of traffic moving to automobile dealers. The Administrative Law Judge recommended, in addition, that AAACon be found unfit; that the petition in No. MC-C-7287 (Sub-No. 1) be denied; and that the application in No. FF-359 also be denied, on further hearing, for the reason that Auto Trip, a wholly owned subsidiary of AAACon, has not been shown to be fit to operate as a freight forwarder in interstate or foreign commerce.

AAACon and Auto Trip, on exceptions, contend that AAACon did not receive proper notice of the matter under investigation as required by the Administrative Procedure Act, specifically with respect to the Bureau of Enforcement's allegation that it failed to arbitrate cases or properly handle claims and that lacking such notice, AAACon was unable to prepare an adequate defense. They contend that the evidence selected and presented by the Bureau demonstrates its bias against AAACon, since it selected only that material from AAACon's files which it believed supported its preconceived notion that AAACon's business and claims handling practices were unreasonable or illegal. They contend that the evidence selected by the Bureau and cited by the Administrative Law Judge in support of his findings is for the most part hearsay, or at best incomplete, and does not support his contention that AAACon has, by its past conduct, demonstrated that it is unfit to operate in interstate or foreign commerce. They submit that the Administrative Law Judge, in reaching his decision, in some instances made findings of fact that were patently false and failed to consider evidence presented by AAACon which supports its contention that in denying a number of the cited claims, it was exercising a legal right, which it was required to do in order not to show perference to any one shipper; and that, in other instances, it resisted claims which sought amounts far in excess of the actual damage to the vehicle transported or which were based on arbitrary estimates or on misrepresentations by the shipper. AAACon denies that it has attempted in any way to avoid liability for just and properly filed claims, or that its procedures in handling and investigating claims were or are in any way unlawful or unreasonable.

AAACon and Auto Trip argue specifically that the arbitration clause employed in the former's bill of lading, which the Administrative Law Judge considers unreasonable, complies with the Commission's suggestions for such provisions in Ex Parte No. 263, *Loss and Damage Claims*, 340 I.C.C. 515 (1972), and was filed and approved as part of its tariff by the Commission; and that similar provisions are common and accepted in use by all major driveaway carriers and have been sustained in the Federal courts. They submit that AAACon's bill of lading, incorporating the arbitration clause, is consistent with the terms of the Uniform Bill of Lading, since the terms set forth therein are not intended to be exclusive, and in no way violates Commission policy or practices. They aver that the Administrative Law Judge erred in concluding that AAACon's arbitration clause requires arbitration in New York City and that such a provision was clearly unreasonable. They submit that New York City is, in fact, merely the situs for the action; that the arbitration clause does not restrict the venue of shipper's suit or deprive a party of any remedies or oust the local court of jurisdiction; that, in any event, bills of lading requiring arbitration at a designated place other than the forum of litigation have long been enforced by the Federal courts; and that by insisting on arbitration, AAACon was merely complying with the Commission's requirement that it treat all claimants alike by asserting its rights and by not waiving any defenses. In addition, they assert that such claims handling procedures as service by mail, and payment within 7 days, which the Administrative Law Judge considers unconscionable, are both reasonable and just; and that in seeking the benefit of any insurance policies in effect on the transported vehicle, AAACon was merely exercising a right without in any way denying primary liability. They submit that it is shipper's responsibility to establish clearly that the reported damage to the vehicle was actually caused by the carrier and in the absence of such evidence, AAACon is entitled to assume, if shipper signs a clear bill of lading, that the car was delivered in satisfactory condition. They maintain that AAACon's screening procedures for its casual drivers are of the type employed by the industry, and the screening requirements recommended by the Administrative Law Judge would, if implemented, impose on it more rigorous standards than those required of similar carriers, placing a severe burden on AAACon's operations. They deny that there is anything about the business practices summarized above that is either unreasonable or unjustified. They contend that AAACon has in every way sought to conduct its operations in a reasonable manner, and when abuses have occurred, it has fired the offending agent.

AAACon and Auto Trip also except to the Administrative Law Judge's finding that AAACon has engaged in the illegal transportation of used automobiles to automobile dealers in violation of the restriction contained in its certificate. They contend that the majority of the allegedly "illegal movements" were deliveries to automobile dealers as repossessors of automobiles or to credit agencies acting in the same capacity; and that in those instances where a clear violation of the restriction occurred, AAACon fired the offending agent. They submit that AAACon has made every effort to advise its agents to avoid even the appearance of violating the restriction, and has sought in every way to comply with the terms of its certificate.

They also except to the Administrative Law Judge's denial of the freight forwarder application on the basis of Auto Trip's lack of fitness. They submit that assuming AAACon is found unfit, the latter's past conduct cannot be charged to Auto Trip; and that, even if it could be, the pertinent statute does not require that a freight forwarder applicant establish its fitness. They also point out that the petition in No. MC-C-7287 (Sub-No. 1) seeks an interpretation of a restriction, in effect posing a question to the Commission, and the Administrative Law Judge's recommendation that the relief sought therein be denied is not an appropriate response.

The Bureau replies urging that the evidence of record clearly demonstrates that in numerous instances AAACon has repeatedly denied claims without a proper investigation on the basis that claimant signed a so-called "clear receipt" for the automobile on delivery, retained the driver's fee for more than 7 days, which, by the terms of AAACon's bill of lading, amounted to a full satisfaction for whatever damage occurred during the transportation, or on the basis of an asserted mechanical defect in the vehicle. The Bureau contends that the Administrative Law Judge properly found that the arbitration agreement as set forth in AAACon's bill of lading, and its practices and policies pursuant to this provision, are in violation of section 216(b) and sections 219 and 20(11) of the act. It submits that by the terms of this agreement, shipper is not permitted the choice of electing to arbitrate; that there is no provision in the bill of lading for the appointment of an arbitrator, and the bill of lading requires that the arbitrator in handling the claim be bound by the same provisions of the bill of lading agreement without variance or modification. As a result, the Bureau contends that the arbitration clause is a sham, since there is no real basis for arbitration. The record properly demonstrates, it avers, that AAACon's past claims handling procedures, including the use of fictitious names by AAACon's employees assigned to handling claims, have been designed to frustrate the filing of legitimate claims by shippers; and that AAACon's reluctance to settle claims is attributable to the fact that by the terms of its insurance policy, it is required to absorb the initial $1,000 in damages. The Bureau concludes by stating that the record properly supports the Administrative Law Judge's conclusion that AAACon failed to properly and thoroughly investigate claims and adequately screen and instruct its casual drivers and agents, and it requests that the recommended cease and desist order be entered, and that the application in No. FF-359 be denied.

Auto Driveaway argues in its reply that the evidence of record clearly supports the Administrative Law Judge's conclusion that respondent has transported automobiles beyond the scope of its authority. It submits that AAACon is well aware of the limits of its certificate, since it has sought on numerous occasions to remove the operating restriction. It contends that AAACon's argument that these vehicles were being repossessed, and, therefore, did not fall within the restriction, is without merit, since AAACon is well aware that a car dealer or credit agency agrees to offer the car for resale in order to minimize loss. It requests, therefore, that the Administrative Law Judge's recommended denial of the relief sought in No. MC-C-7287 (Sub-No. 1) be affirmed.

F. J. Boutell and Nu-Car argue, in their joint reply, that the restriction contained in AAACon's operating certificate is clear and unambiguous and serves a useful purpose; and that the interpretation of the restriction as proposed by AAACon would result in a considerable expansion of its existing service, placing it in the position of being able to divert traffic from Boutell and Nu-Car.

NATA, et al., argue in reply that the Administrative Law Judge interpreted correctly the restriction in respondent's certificate against movements to automobile dealers; that the meaning of the restriction is plain and unambiguous; that the meaning of the term "automobile dealer" is clearly understood by both the public and the transportation industry; and that the initial decision should be affirmed in all respects.

The Department of Defense claims in its reply that the evidence of record amply supports the conclusion that AAACon has been in violation of part II of the act almost in its entirety and has sought by various means to avoid its statutory obligations; that the evidence of record supports the finding that AAACon has otherwise shown itself unfit to operate as a motor carrier in interstate or foreign commerce; and that the recommended cease and desist order should be entered.

AAACon and Auto Trip, on exceptions, renew their request that previously filed petitions seeking the admission of additional evidence be granted, and that the material be considered as part of the record in this proceeding. They contend that the additional evidence deals with current claims handling procedures and arbitration, as well as the resolution or ultimate disposition of certain specific claims referred to by the Bureau or the Bureau's witnesses; and that it is relevant to the central issue in this proceeding, i.e., whether or not the proposed cease and desist order should be entered. They also seek leave to admit additional evidence dealing with specific claims which allegedly were settled by arbitration, and evidence of its claim tariff MF-I.C.C. No. 9 (item 20) as filed and accepted by the Commission with an effective date of September 25, 1972, which contains a provision for the arbitration of claims. Petitioners also seek permission to recall certain witnesses in order to impeach their testimony in light of newly discovered evidence. They argue that the proffered evidence was not available at the time of the initial hearing, or is only now being submitted in order to clear up certain misrepresentations created by the Bureau or its witnesses, and is essential for an adequate consideration of the issues raised in this proceeding. The Commission, Division 1, has repeatedly denied these petitions on the basis, generally, that the proffered evidence would not add any pertinent matter to the record and would unnecessarily delay the proceeding; and that the matters raised by petitioners therein would more properly be considered after the entry of the initial decision. We believe that the relief sought in these petitions was properly denied. AAACon and Auto Trip also request that the proceeding be reopened for further hearing, for hearing *de novo*, and for oral argument. This request will also be denied since, as will be discussed in greater detail below, the record as it now stands is sufficiently detailed to have guaranteed AAACon and Auto Trip a fair hearing.

By petitions filed November 5, 1973, May 17, 1974, and January 16, 1975, AAACon and Auto Trip again seek to reopen the record in these proceedings to admit additional evidence. In their petition filed November 5, 1973, they seek to admit evidence pertaining to the resolution of damage claims filed by two of the Bureau's witnesses, which they state were in *media res* at the time of the hearing. In the May 17, 1974, petition, they seek to present evidence which allegedly clarifies the status of a proceeding in which AAACon is a party, and in which AAACon's operating procedures and claims handling practices are at issue; and in the petition filed January 16, 1975, they tender evidence pertaining to AAACon's present claims handling procedures as well as additional evidence which, assertedly, clearly demonstrates that AAACon's insurance company wrongfully resisted legitimate claims for which AAACon was in no way responsible. Petitioners argue that the proffered evidence should be admitted into the record, since it is clearly relevant to the issue of whether or not a cease and desist order should be entered at this time. Replies were filed to these petitions.

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We are of the opinion that the record as it now stands is sufficiently detailed to have guaranteed AAACon and Auto Trip a fair hearing on the issues under consideration in these proceedings. AAACon's general operating practices, not the merits of any particular claim, are the subject of this investigation. The ultimate resolution of each and every claim cited by the Bureau would further delay the conclusion of these proceedings, with little or no expectation that the additional evidence would contribute anything to the resolution of the primary issues at hand. We are not seeking in this proceeding to determine the relative merits of particular claims. On the other hand, the fairness, justice, or reasonableness of AAACon's claims handling practices and operating procedures, as established by the record, is a proper subject of our investigation, and will, to a great extent, determine the action taken by us.

On March 13, 1975, AAACon and Auto Trip filed a petition and an Offer of Settlement. Petitioners argue therein that in light of the Commission's decision in Ex Parte No. 263, *Loss and Damage Claims, supra*, and certain recent Federal court decisions, the area of disagreement between the parties to this proceeding has been narrowed, and a proposed settlement is practicable. Their Offer of Settlement consists of proposed amendments to several paragraphs of the Administrative Law Judge's cease and desist order. AAACon and Auto Trip indicate that they are prepared to discuss these proposals, or any modification that the Commission may propose.

Replies to petitioners' Offer of Settlement were filed jointly by F. J. Boutell and Nu-Car Carriers, and by NATA, et al., and separately by Auto Driveaway and the Bureau. Boutell and Nu-Car oppose the Offer of Settlement to the extent that it seeks to modify that portion of the Administrative Law Judge's cease and desist order requiring AAACon to cease and desist from the unlawful or unauthorized transportation of automobiles moving to automobile dealers, and that paragraph of the same order denying the petition in No. MC-C-7287 (Sub-No. 1). The objections of NATA, et al., to the Offer of Settlement, as set forth in their joint reply, are similar to those expressed by Auto Driveaway with respect to the proposed modification of the ordering paragraph requiring AAACon to cease and desist from the transportation of automobiles to auto dealers. Auto Driveaway argues that the proposed modifications would reduce the Administrative Law Judge's recommendation to a nullity. It submits that the latest petition is similar to those previously rejected by the Commission, and it requests that no further consideration be given this pleading. The Bureau in its reply states that

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the Offer of Settlement is unsatisfactory and inadequate. It contends that the proposed modifications would limit, condition, evade, and obfuscate the plain and clear language of the proposed order, which it considers clear and specific as to what AAACon may be required to do or refrain from doing, and it requests that the Offer of Settlement be rejected.

We do not believe that any purpose would be served by granting the relief sought in this petition. The arguments advanced by petitioners have been made in prior pleadings, and will be considered herein in weighing the merits of the recommended cease and desist order. We consider this additional pleading and the arguments contained therein to be merely cumulative. The petition will be denied, and the Offer of Settlement rejected.

AAACon and Auto Trip filed an additional petition on September 2, 1975, seeking leave to submit additional evidence, and a petition on September 5, 1975, proposing an Offer of Settlement. Replies to both petitions were filed separately by the Bureau and by Auto Driveaway Company. The tendered evidence would not contribute to the fair and equitable resolution of the issues at hand, and it will be rejected. The petition and Offer of Settlement is in effect a reply to a reply filed by the Bureau to the prior Offer of Settlement discussed above, with additional remarks dealing with the vagueness of the Administrative Law Judge's proposed order. The petition does not contain evidence or argument which would contribute to the resolution of the issues at hand, and it will also be denied.

PRELIMINARY MATTERS

As noted above, AAACon and Auto Trip have, throughout the course of these proceedings, repeatedly filed petitions seeking leave to admit additional evidence and argument, and petitions for reconsideration of the Commission's orders denying the relief sought. We have, of course, at all times made every effort to provide petitioners with a full opportunity to be heard with respect to matters under consideration here, and to deal properly and fairly with each petition. However, these numerous petitions have unnecessarily lengthened the record in this proceeding by the addition of material which is either already part of the record or not pertinent to the issues to be decided. We do not believe that the best interests of the shipping public or the parties immediately concerned is served by the filing of numerous repetitive petitions of this nature.

Additionally, we are concerned with the excessive length of one pleading in particular. Although admittedly the record is extensive, the filing of exceptions covering 756 pages is inexcusable, particularly where the Administrative Law Judge was successfully able to contain his entire summarization of the evidence and conclusions of fact and law in 32 pages. This pleading, one of the longest we have seen in a proceeding of this type, has only served to further delay a long delayed proceeding.

Although the matters decided herein will certainly affect the issue of AAACon's fitness to operate in interstate or foreign commerce in application proceedings, which is certainly of significance to both AAACon and Auto Trip, as well as to the Commission, and they are entitled to fully argue the issues to the extent necessary, there is also some responsibility to limit such pleadings and arguments only to that necessary. The parties hereto, as well as future participants before the Commission are advised, accordingly, that in the future unnecessarily repetitive or lengthy pleadings which add little or no pertinent material to the record and merely obfuscate the issues under consideration, may be stricken, in whole or in part, on the division's or the Commission's own motion or simply rejected outright without further consideration.

The evidence of record, the initial decision and recommended order, and the exceptions and replies have been considered. We find the statement of facts in the Administrative Law Judge's initial decision to be completely accurate in all material respects, and in the interest of not unduly lengthening this report we adopt this statement of facts without further recitation herein.

DISCUSSION AND CONCLUSIONS

As noted above, we are concerned here with an examination of AAACon's practices and procedures in order to determine whether it has conducted its operations in a reasonable manner, consistent with its obligations as a motor common carrier under authority issued by this Commission. The relative merits of a particular claim, or its specific resolution is of no significance to our investigation, because it may be due to any number of reasons having little or no relation to the overall reasonableness of AAACon's practices and procedures.

We believe that the evidence of record properly supports the Administrative Law Judge's finding that AAACon has in the past conducted itself in such a way as to discourage the filing of damage claims and has otherwise sought to avoid its responsibilities as a motor common carrier as set forth in the Interstate Commerce Act. Section 20(11), which has been made applicable to part II of the act by section 219, restates the common law rule that a motor common carrier is virtually an insurer against loss, damage, or injury to property it accepts for transportation, *Loss and Damage Claims, supra,* at page 522. There are, however, certain recognized exceptions, such as so-called "acts of God," acts of the public enemy, or the inherent nature of the property shipped which limit this liability. The Commission also requires that a regulated carrier, in addition to accepting responsibility for the condition of the commodity shipped, establish reasonable practices and procedures for the handling of loss and damage claims, and its record with respect to the satisfactory or unsatisfactory settlement of such claims is among the criteria involved in determining the fitness of a carrier to conduct new or additional regulated operations.

AAACon's pattern of conducting its business in the past demonstrates a concerted effort on its part to discourage the filing of claims, whenever possible, and to deny a claim on the basis of an inherent mechanical defect in the vehicle or a so-called "act of God" with little or no investigation into the merits of the specific claim. The record in this proceeding is replete with evidence indicating AAACon's lack of concern, bordering on almost total indifference, for the interests of its customers. The lack of interest and concern on the part of AAACon, as expressed in a number of the letters submitted as exhibits in this proceeding, is clear evidence to this Commission that AAACon's actions in the past have been inconsistent with its common carrier obligations to provide a responsive service to its customers. Clearly, when a carrier offers to provide a transportation service to the shipping public it does so voluntarily and with full knowledge of its responsibilities both under common law and the Interstate Commerce Act. It requires an attention and concern to the needs of its customers with mandates that every effort be made to furnish the contracted type of service. AAACon, in dealing with a prospective customer has, by its advertising and promotional material, encouraged its potential customers to believe that they are completely protected against any damage to their vehicle during the course of the transportation and that its drivers are bonded and otherwise entirely reliable. The whole tenor of its advertising is to the effect that a customer need not worry since its drivers are trustworthy and the entire operation is fully covered by AAACon's insurance policy. It is quite understandable, therefore, that a customer is dismayed to find either an apparent lack of interest on the part of AAACon's representative with respect to the whereabouts of condition of his automobile, or, upon filing a claim, that AAACon is denying liability, with little or no investigation into the merits of the claim, because of an alleged mechanical defect in the transported vehicle, an alleged so-called "act of God," or because of the execution of a "clear receipt."

Clearly, for a motor carrier to assert a valid defense in one instance, but not in another, would leave the carrier open to the charge that it is illegally favoring one shipper over another. This assumes, however, that the defenses asserted are valid, have a basis in fact, and are not raised as a means of discouraging a claimant from seeking relief. The record indicates that when one of AAACon's shippers was involved in a civil lawsuit in North Carolina due to the action of the driver selected by respondent, AAACon filed an affidavit in which it averred that the driver of the automobile was an independent contractor. AAACon admitted, however, in a letter to its insurance company dated September 21, 1970, that it is liable for the actions of its driver even though he is labeled an independent contractor. AAACon's action in this instance is typical evidence of its efforts to avoid its responsibilities as a common carrier under the act. Again, in a letter dated February 25, 1970, AAACon advised a claimant that its insurance company did not intend taking any action; it failed, however, to advise the claimant that in any case it remained primarily liable. In handling the J. B. White claim, AAACon addressed to the claimant a letter dated January 2, 1970, in which it stated that it did not authorize the repairs to claimant's car and advised claimant to pay for them so that the car could be moved. It is clear, however, that claimant authorized no repairs and that they were authorized, although perhaps inadvertently, by the casual driver selected by AAACon to perform the contracted movement and that as principal it was responsible for the actions of its agent. Again, in handling the Wolfe claim the extent of AAACon's "investigation" appears to have been a telephone call. Although AAACon repeatedly states that its actions in asserting its defenses were motivated by its desire to avoid the appearance or fact of giving a rebate, it apparently failed to note that in advising claimants to retain the final $50 of the freight charges, without conducting an investigation, AAACon was in effect granting rebates to such shippers.

A resolution of the issues at hand does not, we believe, require us to determine whether the use of a ficititious name by its claims representative is a reasonable business practice or whether the incorporation of an arbitration clause into AAACon's bill of lading is acceptable or even desirable. Arguments have been made in this proceeding to the effect that a compulsory arbitration agreement entered into voluntarily by the parties to a transportation contract prior to the actual movement might be a suitable and even desirable means for settling claims for damages resulting from the movement. However, in this instance, both were used in a manner to discourage and confuse prospective and actual claimants. The wording of the pertinent arbitration agreement, irrespective of the manner in which an individual court might interpret the provision, would lead the average individual to the conclusion that arbitration must be held in New York City, and a prospective claimant, when faced with the expense and inconvenience of bringing an action in New York City, might well forego seeking relief. In addition, by the express terms of AAAACon's bill of lading, the arbitrator is required to apply the terms of the bill of lading, which provide, among others, that retention by consignee of the deposit or any portion thereof constitutes settlement of any claim arising from the transportation, or tender by consignee of the balance to the driver upon signing the bill of lading indicates satisfactory delivery. Claimant's right to have the matter arbitrated seems, therefore, to be of questionable benefit to the shipper.[2] AAACon and Auto Trip's assertion that the percentage of claims filed with AAACon is very low, and that a number of claims have gone to arbitration is, as a result, of little significance, since the low percentage of claims may very well be due to AAACon's claims handling techniques and the terms of its bill of lading which clearly discourage the filing of claims. The fact that some claims have gone to arbitration does not refute our conclusion that AAACon has actively sought to discourage the filing of damage claims.

We are, of course, aware that this form of transportation is unique in that the licensed carrier regularly employs so-called "casual

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[2] The agreement provides in part that any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the performance or breach thereof, is nonassignable and shall be settled by arbitration in the city, county, and State of New York, provided, however, that upon such arbitration the arbitrator(s) shall be bound by, and may not vary or modify, the provisions of this Bill of Lading agreement and shall, at the request of any party thereto, apply the rules and laws of evidence that would otherwise apply in a court of proper jurisdiction

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drivers" and the commodity transported is actually the mode of transportation. We do not feel, however, that the difficulties inherent in this type of operation justify AAACon's past business practices and procedures. The unique nature of this form of transportation necessitates instead added diligence on AAACon's part in soliciting its prospective drivers and a readiness to accept liability in those instances where its drivers are negligent. We believe that greater care can be exercised at the time the vehicle is tendered to insure that the vehicle is in satisfactory condition, and, although certain mechanical defects will go unnoticed, such obvious problems as defective brakes or improper or defective tires will more easily be spotted. In addition, a record can be made, at the time the vehicle is tendered, of the correct mileage on its odometer so that it can be determined, on delivery, whether the driver has chosen the shortest and most suitable route. Although AAACon and Auto Trip complain that more rigorous standards for driver selection and a more complete inspection of the vehicle when tendered might be so costly as to render this type of operation unprofitable, we do not believe that these or similar changes in its operating procedures will so burden its overall operations as to render its operations unprofitable. The record in this proceeding overwhelmingly demonstrates that the added benefit to the shipping public will outweigh any additional cost.

We believe that the evidence of record also supports the Administrative Law Judge's additional finding that AAACon has in the past engaged in the illegal transportation of automobiles to auto dealers in violation of the restriction contained in its operating authority. Although AAACon and Auto Trip claim that three of the alleged illegal movements involved the transportation of automobiles to an auto dealer acting as a lessor of the automobile and although title to the vehicles was transferred to the lessee, the movements were nevertheless to an auto dealer, in clear violation of the restriction contained in its certificates. Those movements cited by the Bureau which AAACon alleges involved the movement of repossessed vehicles to credit bureaus, were obviously to be sold as soon as possible by an auto dealer in order to minimize any loss. The intent of the restriction is clear, and these movements constituted a violation of the expressed limitation contained in its operating certificate.

The incidents cited above, as well as those which respondent admits violated the restriction contained in its certificate, demonstrates that AAACon has transported vehicles beyond the scope of its authority in violation of the clear intent of the restriction contained in the involved certificate, and has thereby shown itself to have been operating in interstate or foreign commerce in an unlawful manner. The restriction was imposed to protect the interests of motor carriers engaged in the transportation of vehicles to auto dealers, and to define the nature of the service authorized by AAACon's Certificate No. MC-125808 (Sub-No. 1). We believe that AAACon's and Auto Trip's contentions that the restriction is vague, ambiguous, or illegal is without merit; that the Administrative Law Judge properly found that the restriction is clear on its face and unambiguous, and, therefore, he properly denied the relief sought in AAACon's petition for declaratory order, as set forth in No. MC-C-7287 (Sub-No. 1), and embraced herein, and the relief sought therein will be denied.

We conclude, based on the evidence presented here, that AAACon has engaged in unjust and unreasonable practices and has been an unlawful operator in interstate or foreign commerce. Accordingly, a cease and desist order will be entered. Failure on the part of respondent to comply with the provisions of this order will result in the institution of proceedings aimed at suspension or revocation, in whole or in part, of the certificate issued respondent in No. MC-125808 (Sub-No. 1).

We turn next to the application by Auto Trip. Under section 410 of the act, the Commission may issue a freight forwarder permit to a "qualified" applicant if it finds that the applicant is ready, able, and willing properly to perform the proposed freight forwarder services, and that the proposed operation is consistent with the public interest and the national transportation policy. Although the burden of establishing that it is a qualified applicant and is ready, able, and willing properly to perform is not as strict a burden as that by a motor carrier applicant in establishing its "fitness" under section 207 of the act, *Hurley Freight Forwarder Application*, 285 I.C.C. 704, 709 (1955), the Commission may nevertheless consider whether an applicant is qualified or not to act as a freight forwarder by examining its involvement in unlawful operations. *ABC Freight Forwarding Corp. Ext.—Massachusetts*, 285 I.C.C. 276, 281-82 (1953), affirmed *sub nom.*, *ABC Freight Forwarding Corp.* v. *United States*, 125 F. Supp. 926 (S.D.N.Y. 1954), affirmed *per curiam*, 348 U.S. 967 (1955), and *Lifschultz Fast Freight Extension—Wisconsin*, 285 I.C.C. 659, 665 (1955). Compare also *Lifschultz Fast Freight* v. *United States*, 144 F. Supp. 606 (S.D.N.Y. 1956). Although the

Commission has generally adhered to a liberal attitude in granting permits to freight forwarders, it is not required to sanction or condone unlawful operations.

AAACon and Auto Trip are operated by the same directors, and Auto Trip is a wholly owned subsidiary of AAACon. The corporate veil may properly be pierced in determining issues of fitness of motor carrier applicants and we see no reason why the same rule should not apply here. Compare *Driver Service, Inc.—Investigation of Operations*, 77 M.C.C. 243 (1958). Although AAACon's fitness has not been directly in issue in the proceedings herein, as no AAACon application proceeding is involved, the matters considered herein certainly reflect upon AAACon's fitness and, as a result, upon the qualifications of Auto Trip to operate as a freight forwarder. We conclude that the record reveals that the management of AAACon and, by implication, Auto Trip, is not willing and able to comply with the appropriate laws, rules, and regulations, and we conclude that were an application of AAACon's before us herein we would find AAACon to be unfit[1] and, accordingly, we must find that Auto Trip, AAACon's wholly owned subsidiary, is not a qualified applicant for freight forwarder authority. The application in No. FF-359 will be denied.

FINDINGS

We find in No. MC-C-7287, that respondent, AAACon Auto Transport, Inc., has been engaged in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in interstate or foreign commerce, in violation of sections 20(11), 219, and 216(b) of the Interstate Commerce Act, and has performed operations not authorized by its certificate in violation of section 206(a) of the act and the terms, conditions, and limitations of the said certificate, and that a cease and desist order should be entered.

We further find in No. MC-C-7287 (Sub-No. 1), that the restriction contained in Certificate No. MC-125808 (Sub-No. 1), restricting the authority contained therein against the transportation of traffic to automobile dealers is clear and unambiguous, serves a useful purpose, and that, accordingly, the petition for a declaratory order should be denied.

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[1] In No. MC-125808 (Sub-No. 2), AAACon Auto Transport, Inc., Extension—Driveaway for Prior Rail Movements, an application by AAACon for operating authority is pending and does involve the fitness issue. It was reopened for further consideration of applicant's fitness subsequent to a final determination in No. MC-C-7287, by order of May 4, 1971. In view of the conclusions and findings reached in the proceedings herein, a separate order will be entered on the same date as this report finding AAACon unfit in the Sub-No. 2 proceeding.

We further find, on further consideration in No. FF-359, that applicant, Auto Trip USA, Inc., has failed to establish that it is a qualified applicant or that its proposed operation will be consistent with the public interest and the national transportation policy; and that the application should be denied.

And we further find that these decisions are not major Federal actions significantly affecting the quality of the human environment within the meaning of the National Enrironmental Policy Act of 1969.

An appropriate order will be entered.

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Contents of order recommended by the Administrative Law Judge

It is ordered, That the respondent AAACon Auto Transport, Inc., be, and it is hereby, notified and required to cease and desist from and utilization of bills of lading which incorporate unreasonable provisions and which incorporate provisions which are at variance with those of the Uniform Bill of Lading filed with the Commission as a portion of its tariff, and specifically any provision of any bill of lading utilized by the company which provides for compulsory arbitration of loss, damage, or injury claims in New York City, subject to the laws of New York State, or any other similar provision which would limit the venue in which a claimant could pursue its claim against the respondent.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from policies which negate its common carrier responsibility for the property in its possession for transportation, including the assumption of liability for the full, actual loss or damage to that property, as required by sections 219 and 20(11).

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from its policy of not promptly and thoroughly investigating and processing claims and further orders that the respondent make and keep detailed records of the results of such investigation.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from arbitrarily denying claims when the facts available to it are inconsistent with denial.

It is further ordered, That respondent be, [illegible] it is hereby, notified and required to cease and desist from attempting to impose [illegible]ponsibility on its shippers' insurance carriers for loss of or damage to property it receives for transportation.

It is further ordered, That respondent be, and it is hereby, notified and required to cease and desist from advertising that it insures for liability in any amount unless it discloses to prospective shippers the precise kind and type of insurance carried, including deductible amounts, or that it bonds its drivers, unless it is made clear what type of bond is provided and the kind and manner of protection to its shippers.

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It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from the employment of casual drivers utilized by it without thorough investigation and screening, and it is ordered to make and keep detailed records of the results of such investigation.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from its policy of not properly instructing and controlling its agents and drivers so that shippers' autos will not be abused or used for any purpose other than transportation from and to the origin and destination points by the most direct routes.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from misrepresenting the identity of its officer, employee, or agent, with whom the shipper deals on matters relating to claims.

It is further ordered, That the respondent be, and it is hereby, notified and required to cease and desist from the performance of any operation in interstate or foreign commerce found herein to be unlawful or unauthorized, specifically the transportation of autos moving to automobile dealers and thereafter to abstrain and refrain from the resumption of any such operation unless and until appropriate authority therefor is obtained.

It is further ordered, That upon the willful failure of respondent to comply with any of the provisions of this order, the certificate issued to the respondent, AAACon Auto Transport, Inc., in No. MC-125808 and subnumbers thereunder, may be suspended or revoked in whole or in part.

It is further ordered, That the application of Auto Trip USA, Inc., in No. FF-359 be denied for lack of fitness of the applicant.

It is further ordered, That the petition in No. MC-C-7287 (Sub-No. 1) be denied.

It is further ordered, That the statutory compliance date after which the respondent shall be held to be in willful violation of this order, shall be the 30th day following the service of a notice that this order has become effective as the order of the Commission, in the absence of a stay or postponement by the Commission, or the timely filing of exceptions.

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ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division I, held at its office in Washington D.C., on the 7th day of April 1976.

No. MC-C-7287

AAACON AUTO TRANSPORT, INC.—INVESTIGATION AND REVOCATION OF CERTIFICATE

No. MC-C-7287 (Sub-No. 1)

AAACON AUTO TRANSPORT, INC., PETITION FOR DECLARATORY ORDER

No. FF-359

AUTO TRIP USA, INC., FREIGHT FORWARDER APPLICATION

Investigation of the matters and things involved in these proceedings having been made and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the petitions filed by AAACon Auto Transport, Inc., and Auto Trip USA, Inc., on November 5, 1973, May 17, 1974, January 16, 1975, and September 2, 1975, seeking leave to introduce additional evidence, and the petitions filed by AAACon and Auto Trip, filed March 13, 1975, and September 5, 1975, proposing offers of settlement be, and they are hereby, denied for the reasons set forth in the said report.

It is further ordered, That in No. MC-C-7287, respondent AAACon Auto Transport, Inc., be, and it is hereby, ordered and required to cease and desist, and thereafter refrain and abstain from all of those practices found in the said report to be unjust and unreasonable in violation of sections 20(11), 219, and 216(b) of the Interstate Commerce Act, as well as those operations, in interstate

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or foreign commerce, of the character found in said report to be unlawful.

It is further ordered, That on or before the effective date of this order, respondent AAACon Auto Transport, Inc., pursuant to Rule 99 of the Commission's General Rules of Practice (49 CFR 1100.99), shall notify the Commission, by affidavit, of the extent of its compliance with the preceding paragraph, serving a copy of such affidavit on the Bureau of Enforcement of the Interstate Commerce Commission, and that at any given time thereafter, further consideration may be given the matter herein involved, by further proceeding under section 212(a) of the act, to determine whether Certificate No. MC-125808 (Sub-No. 1), held by respondent AAACon Auto Transport, Inc., shall be suspended or revoked for willful failure to comply with this order.

It is further ordered, That, in No. MC-C-7287 (Sub-No. 1), the petition for a declaratory order be, and it is hereby, denied.

It is further ordered, That on further consideration in No. FF-359, the application be, and it is hereby, denied; and that the prior order of August 25, 1970, in that proceeding, be and it is hereby, vacated and set aside.

And it is further ordered, That the statutory effective and compliance date of this order be, and it is hereby, fixed as June 1, 1976.

By the Commission, Division 1.

ROBERT L. OSWALD,

(SEAL) Secretary.

SERVICE DATE

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ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, C. C., on the 12th day of July , 1976.

No. MC-C-7287

AAACON AUTO TRANSPORT, INC.
INVESTIGATION AND REVOCATION OF CERTIFICATE

No. MC-C-7287 (Sub-No. 1)

AAACON AUTO TRANSPORT, INC., PETITION FOR DECLARATORY ORDER
(New York, N. Y.)

No. FF-359

AUTO TRIP USA, INC. FREIGHT FORWARDER APPLICATION
(New York, N. Y.)

Upon consideration of the records in the above-entitled proceedings, and of:

(1) Joint petition of respondent in Nos. MC-C-7287 and MC-C-7287 (Sub-No. 1) and applicant in No. FF-359, filed April 12, 1976, for reopening the proceeding for the receipt of tendered supplemental evidence;

(2) Reply by Auto Driveway Company, intervener, filed April 29, 1976, to the petition in (1) above;

(3) Joint petition of respondent in Nos. MC-C-7287 and MC-C-7287 (Sub-No. 1) and applicant in No. FF-359, filed May 19, 1976, for reconsideration, and stay of the effective date of the order of Division 1 of April 7, 1976, in the above-entitled proceedings;

(4) Reply by the Bureau of Enforcement, Interstate Commerce Commission, filed June 7, 1976, to the petition in (3) above;

(5) Reply by Auto Driveaway Company, intervener, filed June 8, 1976, to the petition in (3) above;

(6) Joint reply by National Automobile Transporters Association, Automobile Transport, Inc., Baker Driveaway Company, Inc., Dealers Transit, Inc., Kenosha Auto Transport Corporation, M & G Convoy, Inc., Gate City Transport Co., and Square Deal Cartage Co., protestants and intervenors, filed June 8, 1976, to the petition in (3) above;

and good cause appearing therefore:

It is ordered, That the petitions in (1) and (3) above, and the tendered evidence in (1) above, be and they are hereby denied and rejected, respectively, for the reasons (a) that the findings of Division 1, in its report and order entered April 7, 1976, in the above-entitled proceedings (reported at 124 M.C.C. 493) are in accordance with the evidence and applicable law, and (b) that no sufficient or proper cause appears for reopening the proceedings for reconsideration, for granting further consideration to the matter, or for granting any of the relief sought.

It is further ordered, That the statutory effective and compliance date of the order of April 7, 1976, as previously extended, remains fixed as August 3, 1976.

By the Commission, Division 1, Acting as a Appellate Division, Commissioners Murphy, Gresham, and Christian.

ROBERT L. OSWALD,
Secretary.

(SEAL)

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1201 N. Detroit
Los Angeles Calif

DEALER NO 422 300

DATE 12-27-61	MILEAGE 48428	LICENSE SLZ 320	RECEIVED A.M. P.M.	QUALITY CONTROL	MATERIAL ISSUE
COLOR Yellow	TYPE 113 -	CHASSIS NO. 40HP	PROMISED A.M. P.M.	SERVICE ADVISER	

☐ LUBRICATION
☐ CHANGE ENGINE OIL
☐ CLEAN OIL STRAINER
☐ CHANGE TRANS. OIL
☐ WASH CAR

QTY.	IDENT. NO.	PART NO.	DESCRIPTION	COST	PRICE
1	29141	111101025B	Case		86.65
1	00130	113105101A	Crank		52.80
1	00331	113109025D+2	Cam		15.10
8	00351	113109309C	Lifters		13.90
2	[illegible]	111198057A	P/C		34.75
2	[illegible]	113105401D	Rods		15.75
6		113101131A	Nuts		1.95
4		113109601202	Valves		12.30
4		ZVP103804	[illegible]		7.80
4		113105 [illegible] A	Rod B		1.[illegible]
1		113105245F	Seal		1.90
8		113105701	Bolts		4.40
1		111198005	Gaskets		5.80
1		111198461	Bolts		11.[illegible]
8		113109619	Seals		.80
1	23223	113 101	Cap		.10
		TOTAL PARTS			1135

ACCESSORIES — TIRES AND TUBES

Crom auto trans [illegible]

M.I 46644 -213

TOTAL ACCESS. T. & T. 3842

SUBLET REPAIRS

Mr. [illegible] 301-853

P.O. NO.

TOTAL SUBLET

OPER. #	MILE MAINTENANCE SERVICE	
	R+R engine + Repair	13.50
	Disassemble eng. completely and	
	inspect all and parts	99.00
	Repair Valves	13.50
	Replace [illegible] guide	9.[illegible]
	repair headlights	4
	replace antenna	.5

COMPRESSION TEST #1___ #2___ #3___ #4___ #5___ #6___

I hereby authorize the above repair work to be done along with necessary materials. You and your employees may operate vehicle for purposes of testing, inspection or delivery at my risk. An express mechanic's lien is acknowledged on vehicle to secure the amount of repairs thereto. You will not be held responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft, accident or any other cause beyond your control.

SIGNED John X. Sorace

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS MADE

	GALS. GAS ●	
5	QTS. OIL ●	1.55
	LBS. GREASE ●	
	AUTO TRANS. OIL	
	TOTAL GAS, OIL & GREASE	

☐ CHARGE
☐ CASH
☐ INTERNAL
OK'D BY_____
ESTIMATE $

INTERNAL SUMMARY

ACCT	CHARGE	COST

LABOR	135.00
PARTS	278.95
ACCESSORIES	3.95
GAS, OIL & GREASE	1.95
PAINT MATERIAL	
SUBLET REPAIRS	
SALES TAX	9.97
TOTAL AMOUNT	429.82

VOLKSWAGEN

3131 [illegible] FREMONT • PHONE 737-3014
LAS VEGAS, NEVADA 89105

[illegible] 474A

MATERIAL ISSUE

A 22204

NAME	PHONE	DATE	PAGE OF
ADDRESS	CITY		CASH

	QTY	IDENT. NO	PART NO	DESCRIPTION		VOLKSWAGEN PARTS	ACCESSORIES & TIRES	MISC
1	1	18257	311115[illegible]	Piston		35		
2	4		111115161	Nuts		1 20		
3	1	28809	311115107A	Oil Housing		3 70		
4	1	28810	311115141C	Oil Cover		90		
5	1	15269	311115123A	Gear Oil		1 45		
6	1	00315	311115 115	Gear Oil		2 10		
7	6		113101125	Seals		60		
8	1	18024	211255359	Hose		1 15		
9	1	13802	1110605103	Antenna			3 95	
10								
11						11 35	3 95	
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								

TOTAL	
SALES TAX	
GRAND TOTAL	

APPENDIX/8/7

FORM V 312-A

430

VOLKSWAGEN
1750 North Cahuenga Boulevard
Phones 462-6861 and 462-0916
HOLLYWOOD, CALIFORNIA 90028

L [illegible]

MATERIAL ISSUE

DATE 12/5/69 24020

NAME White
PHONE
ADDRESS
CITY
PAGE OF
CASH

	QTY	IDENT. NO.	PART NO.	DESCRIPTION	C	VOLKSWAGEN PARTS	ACCESSORIES & TIRES	MISC.
1	1	11538	111995057	Points		1 50		
2	2	00125	113101481A	Gasket		30		
3	4	-0-	Rear	Linings		6 00		
4	2	02160	211609619	Clips		10		
5	2	-0-	N125451	Pin		10		
6	1	29163	113425621A	Damper		4 95		
7	1	11646	113598021A	Belt		2 15		
8	1	00912	113141723	Spring		45		
9	1	25444	131405323A	Nut		15		
10	1	25694	113711141A	and Knob		55		
11						[illegible]		
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
				TOTAL				
				SALES TAX				
				GRAND TOTAL				

APPENDIX 1817a

FORM V-512-A
L6524

175 [illegible] th Cahuenga Boulevard
Phones 462-6861 and 462-0916
HOLLYWOOD, CALIFORNIA 90028

113

INVOICE No. 53603

wait 7³⁰

[illegible] Terry White
1201 N Detroit St
[illegible]
467-9177

REP. DATE	MILEAGE	LICENSE	RECEIVED	PROMISED
12/4/6[illegible]	17219	SL2320	A.M. P.M.	[illegible] A.M. P.M.
PHONE	**CHASSIS NO.**	**MAKE**	**MODEL**	**DEL'Y DATE**
		66	113	

OPERATION NO.	TIME UNITS		LABOR
		☑ ENGINE OIL CHANGE ☐ TRANSMISSION OIL CHANGE	
		☑ MILE MAINTENANCE-SERVICE ☒ LUBRICATION	13.75
		VOLKSWAGEN DIAGNOSIS [illegible] Boot Water	—
		Replace [illegible]	[illegible]
		Cust in wait room	
		[illegible]	[illegible]
		Replace [illegible]	[illegible]
		[illegible]	[illegible]
		Replace [illegible]	[illegible]
		[illegible]	
		Comp [illegible]	
		③	

DEC 06 1969

I hereby authorize the above repair work to be done along with the necessary material, and hereby grant you and/or your employees permission to operate the car or truck herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs thereto.
I ALSO ACKNOWLEDGE THAT YOU ARE NOT RESPONSIBLE FOR LOSS OR DAMAGE TO CARS OR ARTICLES LEFT IN CARS IN CASE OF FIRE, THEFT OR ANY OTHER CAUSE BEYOND YOUR CONTROL.

X

GAS & OIL	PRICE
GALS. GAS	
2½ QTS. ENG. OIL	1.15
1½ PTS. TRANS. OIL	1.65
TOTAL GAS & OIL	2.80

MECHANICAL LABOR / LUBE	[illegible]
WASH / POLISH / UNDERCOATING	
VW-PARTS	21.[illegible]
VW-ACCESSORIES	
OTHER PARTS & ACCESSORIES	
GAS & OIL	2.80
SUBLET REPAIRS	
SUB TOTAL	
SALES TAX	1.[illegible]
TOTAL	[illegible]

☒ CASH ☐ INTERNAL
ESTIMATE $
SERVICE ADVISER

CHARGE
OK'D BY

QUALITY CONTROL
SERVICE ADVISER

L9433

APPENDIX 18176

431

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

March 3, 1970

Miss Jean Blake White
Box 220-C RR #3
Reisterstown, Maryland

Dear Miss White:

I have just received your letter of February 28th.

I am taking the time to write this letter to you because I am genuinely concerned about the situation that has arisen with your vehicle. Putting aside all the charges and counter-charges and acrimonious language, does it not make sense for you to pay for the repairs and receive the vehicle, rather than continue making bank payments and not have the vehicle, as you suggest in your latest letter?

While I assure you that we have done everything proper, I can only advise you that it costs us no more to have your vehicle delivered to you than to leave it stand at the Volkswagon dealer.

I hope that you will accept the suggestion in this letter in the spirit in which it is written.

Very truly yours,

Ralph J. Zola

RJZ:jk

P.S. Of course, technically, we have a claim for the delay in delivery against you, under the terms of our Bill of Lading. While we are not pressing our claim at this time, I do want you to have all the facts so that you can get a complete picture and understand that we are trying to settle this matter on an amicable basis.

APPENDIX 1818.

June 9, 1970

Mr. Lewis Nadler
49-58 Horatio Parkway
Bayside, New York

Dear Mr. Nadler:

Your file has been carefully reviewed by our company. As you know, the causes of the accidents of your vehicle were acts of God which under the uniform bill of lading we are not responsible for.

However, in a spirit of amicability we are enclosing our check of $100.00 in full settlement of all claims.

We hope to have the pleasure of serving you again in the near future to your complete satisfaction.

Very truly yours,

Ralph Zola
Executive Vice-President

RZ:dd
Enc.
b/c: Interstate Commerce Commission
Bureau of Operations
26 Federal Plaza
New York, N.Y. 10007

Mortimer Michael
Asst. Atty. General
State Of New York
Department Of Law
State Office Building
80 Centre Street
New York 13, N.Y.

443

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

January 7, 1970

Mr. Lewis Nadler
4958 Horatio Parkway
Bayside, New York

Dear Mr. Nadler:

Your file has been reviewed by our company.

It appears that the first accident involving your vehicle was the result of a mechanical defect, for which our company must decline liability.

As to the second accident, there is a question as to whether or not the accident resulted in an "act of God".

However, in order to settle the claims and controversies in question, we are enclosing our check for One Hundred ($100.00) Dollars.

Very truly yours,

Bob Maxwell

Bob Maxwell

BM:jk
Enc

448

[illegible] 1970 | DUE DATE April 4, 1970

AAACON AUTO TRANSPORT, I

BILL OF LADING/AGREEMENT

PICK UP CAR FROM-

Mr.Gerald Bracken
Starlight Towers, Apt 1D
6000 N.Ocean Blvd,
Ft.Lauderdale, Fla.

CONSIGNEE -

Mr.Gerald Bracken,
650 South [illegible] St.,
Lawrence, Mass. Tel.[illegible]

REGISTERED CAR OWNER (SHIPPER)	Gerald Bracken	REGISTERED ADDRESS	Lawrence,	CITY STATE	[illegible]
CAR MAKE	Cadillac	TYPE	Sedan	MODEL DOORS	4 Dr
LICENSE #	[illegible]				
AUTOMATIC TRANS.	Yes	POWER BRAKES	yes	POWER STEERING	yes
SERIAL #	[illegible]				

CONDITION REPORT – √GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER		LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK
FRONT BUMPER		LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
FRONT GRILLE		L BODY SILL		R LIGHTS		RADIO		
FRONT LIGHTS		LR WINDOW		RR PANEL		HEATER		
HOOD		LR DOOR		RR WINDOW		UPHOLSTERY		
WINDSHIELD		LR PANEL		RR DOOR		KEYS		
LF FENDER		TRUNK LID		R BODY SILL		RR FENDER		
RF VENT WINDOW		R BUMPER		RF WINDOW		LR FENDER		
LF VENT WINDOW		R WINDOW		RF DOOR				

Shipper guarantees the operating and mechanical condition of the herein mentioned vehicle during transport, and assumes all [illegible] for damage and all liabilities arising therefrom. Regardless of cause, carrier shall not be liable for any damages or consequences [illegible] delay in delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. Shipper agrees [illegible] driver is an independent contractor and that driver may make any necessary repairs to said vehicle of less than twenty dollars without [illegible] consent and repairs in excess of twenty dollars with shipper's prior consent. Shipper shall pay for all said repairs. In the event of [illegible] loss to said vehicle, shipper shall retain all or part of driver's fee required to pay for same; or, if said damage or loss shall exceed driver's [illegible] shipper shall forward driver's fee, constituting final freight bill payment due, to carrier within seven days after said damage or loss [illegible] Payment to driver by shipper or shipper's agent shall constitute conclusive evidence of satisfactory delivery of vehicle. Retention of [illegible] fee, at shipper's option, beyond said seven day period shall constitute conclusive evidence of full settlement and satisfaction of any [illegible] against carrier by shipper and shipper's assigns. This Bill of Lading and any shipment hereunder shall not operate as a waiver of [illegible] any contract of indemnity which shipper effected prior hereto or the obligations thereunder which shall devolve primarily upon [illegible] indemnitor, and said contract of indemnity shall be and remain in full force and effect. Unless a greater value is declared [illegible] shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all [illegible] for loss or damage thereto in excess of fifty dollars. All terms and conditions of the Uniform Straight Bill of Lading, a copy of [illegible] available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under [illegible] Uniform Straight Bill of Lading shall be invalid and void unless personally signed by and forwarded by the shipper to carrier. The shipper shall commence any legal action necessary to mitigate or recover damages from any third party responsible, or any source liable, therefor. Any recovery by, or satisfaction of said damages to, shipper from any source liable or responsible to shipper therefor, shall, to the extent [illegible] operate and constitute a discharge and release of said claims against carrier by shipper and shipper's assigns. Driver alone shall be responsible for all violations of law during the time that the vehicle is in his possession. Driver and shipper consent to the personal jurisdiction of [illegible] courts of the State of New York and to service of process upon driver or shipper for the commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier This Bill of Lading agreement shall be deemed executed by the carrier at its principal [illegible] in New York City. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the [illegible] formance or breach thereof, is non-assignable and shall be settled by arbitration in the City, County, and State of New York; pro[illegible] however, that upon such arbitration the arbitrator(s) shall be bound by, and may not vary or modify, the provisions of this Bill of Lading agreement.

PICKED UP IN THE ABOVE CONDITION EXCEPT AS NOTED		DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED	
SHIPPER OR SHIPPER'S AGENT	X	CONSIGNEE (SHIPPER'S AGENT)	X
DRIVER	William D. Rollins	DRIVER RECEIVED FULL PAYMENT	
DATE	March 30, 1970	DATE	

TOTAL PAYMENT DUE AT DESTINATION $ 40.00 ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CO

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION

NAME William Rollins & Camille
ADDRESS 179 Beacon St.
CITY Boston, Mass.
PHONE 266-4[illegible]9

APPENDIX 1821

E/50

COLUMBIA PICTURES
711 FIFTH AVENUE
NEW YORK, N.Y. 10022

LEGAL DEPARTMENT

April 28, 1970

AAACON Auto Transport Inc.
147 West 42nd Street
New York, New York 10036

Gentlemen:

On February 10, 1970 I delivered to you my 1964 Buick automobile bearing New York registration number VV9328 for transport to and delivery at West Palm Beach, Florida.

The car was not delivered to West Palm Beach until very late in the day on February 16, 1970. Your driver at that time told Mrs. Moross that he had had some difficulty with the starter, repairs to which cost $27.10, and for which he presented her with a bill in that amount (a copy of which is enclosed). Whether in fact repairs were actually necessary and were made I do not know. Ostensibly the need for repairs was given as the reason for the late delivery.

Now, a few days ago, I received from the Metropolitan Court of Miami, Florida, two summonses for the illegal parking of my automobile in Miami, one for the 14th of February and one for the 16th of February. Miami, as you know, is some 80 miles south of West Palm Beach. What was your driver doing with my car in Miami for at least two days? Was he there on his own or was he performing some function for you? In either case, when he passed West Palm Beach the use of my car was completely unauthorized and probably could be regarded as a larceny.

The non-availability of the car to Mrs. Moross resulted in additional cost to us for the renting of an automobile which probably averages

A DIVISION OF COLUMBIA PICTURES INDUSTRIES, INC.

out to $10 a day, this in addition to the extra mileage that was piled up on the car during the period of its non-authorized use.

In addition, the car was abused, misused and when delivered was in frightful condition; the cost of putting it into running order again was in the neighborhood of approximately $200.

All in all, this has been a very unhappy experience so far as I am concerned and now to have all this irritation and cost topped off by being told that my car was in Miami on some private use, for which I am now being asked to pay a fine, is the last straw. In my opinion these tickets are really your responsibility and not mine and I expect to be reimbursed.

I understand that your drivers are bonded and whether the items of my complaint are within the scope of the bond I do not know but is a matter between you and your bonding company.

I insist that this matter be reviewed and considered by you and quite promptly and that all of the items I have indicated above as costs are reimbursed to me.

Very truly yours,

IRVING MOROSS

IM:AM
Enc.

P. S. Xerox copies of the above mentioned summonses are herewith enclosed.

I. M.

NEW LOCATION
A UNITED AUTO RENTAL, INC.
1349 DADE BLVD.
MIAMI BEACH, FLORIDA
CITCO SERVICE STATION

Mr. Sol Klausner
2100 Lynnwood Ave.,
Ft. Lee,
New Jersey

Dear Mr. Klausner,

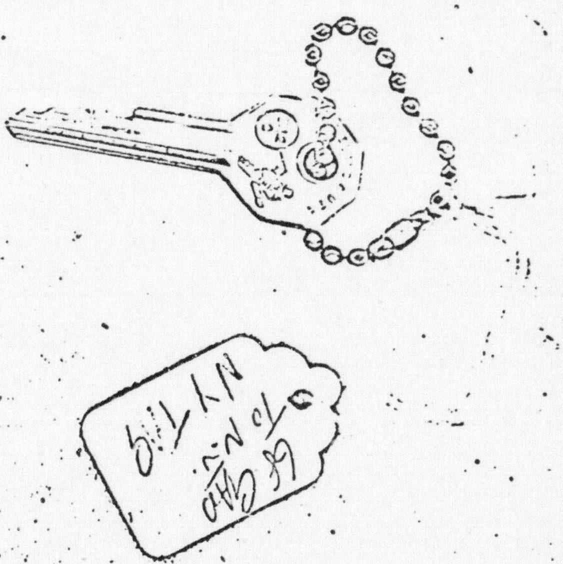
So sorry for misplacing your keys, but could not find them anywhere until car left.

Hope everything turned out all right.

Sincerely,
Elliott.

A UNITED AUTO RENTAL, INC.

Your Sales Engineer Is MAX KARGER



963

FLYING A of FORT LEE
ROUTE 4 WEST
FORT LEE, N. J.

Day: 944-9704 Night: 843-7939

№ 869

NAME	Mr. Lawrence
ADDRESS	Mediterranean Towers.
CITY	Fort Lee, N. J.

DATE	CUST. ORDER NO.	WHEN PROMISED	PHONE
4-22-70			461-7440

YEAR & MAKE OF CAR-TYPE OR MODEL	SERIAL NO. / MOTOR NO.
68 Caddy 4DR H.T.	

LICENSE NO.	MILEAGE	WRITTEN BY
MSS 482	24470	

AMT.	PART NO.	NAME OF PART	SALE AMT.
1	Starter		45 52
1	Coil		12 25
1	set Points		3 85
1	Condenser		1 10
1	[illegible]		25 69
SEE BACK FOR ADDITIONAL PARTS	TOTAL PARTS ►		91 89

DESCRIPTION OF WORK	AMOUNT
Repair damages done to 1968 Caddy due to running car with wires crossed because no key was used causing it to burn out starter & coil wires due to wrong connections. [illegible] labor on above work done & repair all necessary parts & components.	49 00

Pd Law Check # 392

ACCESSORIES — TIRES AND TUBES

TOTAL ACCESSORIES ►

GAS, OIL & GREASE			CHECK BELOW				
			LUBRICATE			LABOR ONLY	49 00
GALS. GAS			CHANGE ENGINE OIL			PARTS	91 89
QTS. OIL			TRANSMISSION			ACCESSORIES	
LBS. GREASE			DIFFERENTIAL			GAS, OIL & GREASE	
			WASH			MISC. MERCHANDISE	
			POLISH			REPAIRS	140 89
TOTAL GAS, OIL & GREASE ►			TOTAL SERVICE ►			TAX	7 05
AUTHORIZED BY						TOTAL ►	147 94

ESTIMATES ARE FOR LABOR ONLY, MATERIAL ADDITIONAL

I HEREBY AUTHORIZE THE ABOVE REPAIR WORK TO BE DONE ALONG WITH NECESSARY MATERIALS. YOU AND YOUR EMPLOYEES MAY OPERATE ABOVE VEHICLE FOR PURPOSES OF TESTING, INSPECTION OR DELIVERY AT MY RISK. AN EXPRESS MECHANIC'S LIEN IS ACKNOWLEDGED ON ABOVE VEHICLE TO SECURE THE AMOUNT OF REPAIRS THERETO. IT IS UNDERSTOOD THAT THIS COMPANY ASSUMES NO RESPONSIBILITY FOR LOSS OR DAMAGE BY THEFT OR FIRE TO VEHICLES PLACED WITH THEM FOR STORAGE, SALE, REPAIR OR WHILE ROAD TESTING.

PAY THIS AMOUNT ⇧

SOLOMON KLAUSNER
ATTORNEY AT LAW

295 MADISON AVENUE
NEW YORK 17, N.Y.
LEXINGTON 2-7888

April 23, 1970

AAACon Transport Inc.
147 West 42nd Street
New York, N. Y.

Att: Mr. Robert Maxwell

Gentlemen:

Pursuant to telephone conversation, I am submitting herewith details of my claim which arose out of the negligent handling of my car during the time that it was being transported from Miami, Florida, to Fort Lee, New Jersey. The following are the details relating to this matter.

The automobile, a 1968 Cadillac sedan, which I lease from Briggs Leasing Corp., was delivered to your branch located at 1439 Dade Blvd., Miami Beach, Florida, on Saturday, April 11th. I received a receipt therefor, a Xerox copy of which is enclosed. The car was delivered and placed in my garage on Monday, April 20th, at which time I paid the driver the balance due of $49.00 plus a $5.00 tip, having paid to your Miami branch the sum of $50.00.

At the time of the delivery, the driver informed me that the dispatcher in Miami could not find the ignition key which had been left with him by me. However, he instructed the driver to "jump the wires" and drive the car to Fort Lee in this manner. In order to verify this, I called your Miami branch and the dispatcher verified this fact. On April 22nd I received a note from your Miami branch, the envelope of which was postmarked April 18th. The ignition key was enclosed and the note read; "So sorry for misplacing your keys but could not find them anywhere until car left. Hope everything turned out alright." I have the note and the envelope in my possession.

After the driver had left, when I wanted to drive my car, I could not start the engine. I called the AAA and when they inspected the car, they found a number of wires were loose and that damage had been done to the starter, the coil, the points, the condenser and the hood molding. Since it was impossible to use the car, I called Briggs Leasing Corp. who absolutely refused to have anything to do with the repairs, inasmuch as the damages were done through the negligence of the transporting company.

I have had the repairs done by the Flying A of Fort Lee, an AAA station. I am enclosing a Xerox copy of the repair bill. Inasmuch as Briggs Leasing Corp. has refused to be involved in the payment of these repairs, I was required to pay the sum of $147.94 to the repair station.

There is no doubt in my mind that all of these damages, as well as the inconvenience caused me in the unavailability of the car for my use, was caused entirely by the negligence of the employees of your company. I, therefore, demand immediate payment for these claims. If I do not receive satisfactory adjustment of this matter within a reasonable time, I will, necessarily, start action. In this event, I will also file a report of all of these facts with the Interstate Commerce Commission, under whose supervision and license your company operates. I trust that these steps will be unnecessary.

Very truly yours,

SOLOMON KLAUSNER

SK:ed
Encls.

BEST COPY AVAILABLE

E 68

PICK UP DATE
4/3/70

DUE DATE
4/12/70
~~4/6/70~~

AAACON AUTO TRANSPORT, INC. E 1510

BILL OF LADING AGREEMENT

PICK UP CAR FROM-
Mr. Donn Clendenon
Colonial Inn -- # 121
St. Petersburg Beach, Fla.
Phone 362-1011

CONSIGNEE -
Mr. Teddy Decker
Shea Stadium, 126th & Roosevelt
Flushing, N.Y.
Phone 672-2000

REGISTERED CAR OWNER (SHIPPER) Donn A. Clendenon
REGISTERED ADDRESS 1152 Oriole Dr. S.W.
CITY & STATE Atlanta, Ga.

CAR MAKE Dodge
TYPE Challenger
MODEL DOORS 2 HT
LICENSE # I-6799, Ga.

AUTOMATIC TRANS. yes
POWER BRAKES yes
POWER STEERING yes
SERIAL # JS23N0B189678

CONDITION REPORT — ✓ GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER	P	LF WINDOW	✓	TIRE JACK	✓	ROOF	✓	LUGGAGE IN TRUNK ONLY
FRONT BUMPER	S	LF DOOR	P	SPARE TIRE-WHEEL	✓	HUB CAPS	✓	Golf Clubs
FRONT GRILLE	✓	L BODY SILL	✓	R LIGHTS	✓	RADIO	✓	Clothes
FRONT LIGHTS	✓	LR WINDOW	✓	RR PANEL	✓	HEATER	✓	
HOOD	✓	LR DOOR	X	RR WINDOW	✓	UPHOLSTERY	✓	
WINDSHIELD	✓	LR PANEL	S	RR DOOR	X	KEYS	2	
LF FENDER	✓	TRUNK LID	S	R BODY SILL	✓	RR FENDER		
RF VENT WINDOW	X	R BUMPER	✓	RF WINDOW	✓	LR FENDER		
LF VENT WINDOW	X	R WINDOW	✓	RF DOOR	P			

Shipper guarantees the operating and mechanical condition of the herein mentioned vehicle during transport, and assumes all responsibilities for damage and all liabilities arising therefrom. Regardless of cause, carrier shall not be liable for any damages or consequences from or for any delay in delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. Shipper agrees that driver is an independent contractor and that driver may make any necessary repairs to said vehicle of less than twenty dollars without shipper's consent and repairs in excess of twenty dollars with shipper's prior consent. Shipper shall pay for all said repairs. In the event of damage or loss to said vehicle, shipper shall retain all or part of driver's fee required to pay for same; or, if said damage or loss shall exceed driver's fee, shipper shall forward driver's fee, constituting final freight bill payment due, to carrier within seven days after said damage or loss occurs. Payment to driver by shipper or shipper's agent shall constitute conclusive evidence of satisfactory delivery of vehicle. Retention of driver's fee, at shipper's option, beyond said seven day period shall constitute conclusive evidence of full settlement and satisfaction of any claims against carrier by shipper and shipper's assigns This Bill of Lading and any shipment hereunder shall not operate as a waiver or avoidance of any contract of indemnity which shipper effected prior hereto or the obligations thereunder which shall devolve primarily upon the indemnitor, and said contract of indemnity shall be and remain in full force and effect. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. All terms and conditions of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be invalid and void unless personally signed by and forwarded by the shipper to carrier. The shipper shall commence any legal action necessary to mitigate or recover damages from any third party responsible, or any source liable, therefor. Any recovery by, or satisfaction of said damages to, shipper from any source liable or responsible to shipper therefor, shall, to the extent thereof, operate and constitute a discharge and release of said claims against carrier by shipper and shipper's assigns. Driver alone shall be responsible for all violations of law during the time that the vehicle is in his possession. Driver and shipper consent to the personal jurisdiction of the courts of the State of New York and to service of process upon driver or shipper for the commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. This Bill of Lading agreement shall be deemed executed by the carrier at its principal office in New York City. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the performance or breach thereof, is non-assignable and shall be settled by arbitration in the City, County, and State of New York, provided however, that upon such arbitration the arbitrator(s) shall ~~be bound by,~~ and may not vary or modify, the provisions of this Bill of Lading agreement and shall, at the request of any party thereto, apply the rules and laws of evidence that would otherwise apply in a court of proper jurisdiction.

PICKED UP IN THE ABOVE CONDITION EXCEPT AS NOTED		DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED	
SHIPPER OR SHIPPER'S AGENT	X	CONSIGNEE (SHIPPER'S AGENT)	X Donn Clendenon
DRIVER	~~Edward Baine~~ John W. Barney	DRIVER RECEIVED FULL PAYMENT	John W. Barney
DATE	~~4/4/70~~ 4/10/70	DATE	April 13, 1970

TOTAL PAYMENT DUE AT DESTINATION $ 50.00 ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION
NAME ~~Edward Saine~~ John W. Barney
ADDRESS ~~11 Cherry St.~~ c/o Mrs. Harrison
CITY ~~Little Falls, N.J.~~ 1410 Park Ave.
PHONE ~~Phone 256-3660~~ New York City

Driver must deliver to Shea Stadium
by 9:30 PM on Sunday, April 12th.

APPENDIX 18 28

MAIL TO
ST. PETERSBURG
2422 CENTRAL AVE.

Donn Clendenon
Scripto Inc
P O Box 4847
Atlanta, Ga. 30302

July 11, 1970
Re
Don Clendenon

Signed B.L.

Bob. Maxwell

P S Your claim is also denied as payment to the driver on delivery means a satisfactory delivery as per the terms of the bill of lading

36 Sherman Ave.
Plainview, N.Y. 11803
March 13, 1970

AAACON Auto Transport, Inc.
147 W. 42 ST.
New York, N.Y. 10036
ATTN.: Mr. Bob Maxwell

Dear Mr. Maxwell;

On DEC. 17, 1969, I obtained a Volkswagon from AAACON Auto Transport, INC. to drive from Los Angeles to Reisterstown Maryland for a Miss Jean White.

My friend and I had planned to take the northern route across, however, due to reports of heavy snowfall, we were diverted south, and decided to take route 66.

We went as far as Death Valley Junction on our way into Nevada when the car started to lose power and clang. Due to my experience with cars working for Avis Rent-a-Car, Inc. and various gas stations, I immediately pulled over and shut the engine. I checked the oil level, and found it to be near full.

We were then towed back to Death Valley Junction Service Station where the proprietor looked into it further. He confirmed my reading on the oil stick and said that the camshaft was split, maybe due to a blocked oil passage.

We were then towed, with authorization from the owner, to Las Vegas, Nevada to a Volkswagon dealer. The tow bill was $125 and the money was wired to us by the owner.

At the dealership, it was understood by me that I was to sign a release, authorizing the dealer to estimate the cost of repairs, which meant taking the engine apart.

When I returned for the estimate, I was handed a bill for approximately $429 for repairs. This shocked me to the point where I was Afraid to call the owner. I did, however, and explained the situation to a Mr. Blake, apparently the owner's advisor. Mr. Blake told me to leave the car in the dealership, and that he would have to look into it further.

I truthfully don't know what the dealer had in mind, and he apparently thought that he was dealing with a kid, because he mentioned that to Mr. Blake a couple of times while on the phone with him. Like I said, I don't know what the dealer had in mind, but my reputation is at stake. Presently, I am on the list for Patrolman for the Nassau County Police Dept., and I am currently under investigation by them for my background. I have tried hard to keep my record clean with much success, and I wouldn't like it if my good intentions were taken the wrong way and I was not permitted on the force for this reason.

Everyone has a future, how about letting me get started with mine!

Thank you very much for your time and consideration.

Sincerely,

4/111

Accepted - but not as to truth or veracity

STATE OF FLORIDA)
CITY OF MIAMI)
COUNTY OF DADE)

DANIEL W. HURLEY, being duly sworn, deposes and says:

That my name is DANIEL W. HURLEY. I am over the age of 21 years and reside at 3171 South West 14th Street, Miami, Florida.

That I am currently a student at Miami Dade Junior College, Miami, Florida.

That on or about August 20, 1971, I was hired by AAACON Auto Transport, Inc., of 147 West 42nd Street, New York, New York, to drive a 1966 Buick two door sedan, black in color, bearing registration No. Ks 3932, a car owned by Mr. Irving Levine to West Palm Beach, Florida.

That in accordance with my agreement with AAACON Auto Transport, Inc., I was to pick up the automobile on Friday, August 20, 1971 and the car was to be delivered to its owner on August 23, 1971 in West Palm Beach, Florida.

That I left a $50.00 deposit with AAACON Auto Transport, Inc., which sum was to be refunded by the owner of the car upon my delivery of the car to him in West Palm Beach, Florida in satisfactory condition.

That on or about August 20, 1971 at approximately 2:00 P.M. I picked up the car which was at a garage on 95th Street, off Columbus Avenue in New York City and the vehicle was checked out mechanically and to the best of my knowledge the car was in good operating order.

That I immediately left New York City and drove thru the evening on my way to West Palm Beach, Florida.

That I made a stop in Lakewood, New Jersey for about three (3) hours and then resumed driving, and I then stopped again in Baltimore, Maryland for an [illegible]

That after leaving Baltimore, Maryland, I resumed driving on my way towards Florida and was in North Carolina where I had a blowout on the right front tire.

That I stopped the car and pulled off the road and changed the tire.

That the automobile did not sustain any damage at this time as a result of the blowout. At the time of the blowout I was travelling on Rural Road 1522, Nash County, North Carolina.

That after I changed the tire I attempted to pull back on the road and while looking behind me for oncoming traffic, I lost control of the automobile and struck a barricade at the intersection of Rural Road 1522 connector to Interstate 95.

That the car sustained very heavy damage as a result of my striking the barricade including the breaking and cracking of the entire front windshield and severe body damage to the front end.

That I was not injured as a result of the accident.

That I emphatically state that the accident was in no way caused by a mechanical defect nor operational failure on the part of the vehicle which I was driving, but to the contrary, the car performed normally and was in good mechanical order.

That I was not injured as a result of the accident.

That the North Carolina Highway Patrol came along and they called the tow truck, wrote out an accident report and transported me back to Rocky Mt., North Carolina.

That on the morning of August 21, 1972, while in Rocky Mt., North Carolina, I called the AAACON Auto Transport, Inc, to tell them of the accident and their structed me to call the owner of the car in Brooklyn, New York.

That I did so and informed the owner of the accident and the damages to his vehicle, and I requested permission of the owner to leave the car in Rocky Mt., North Carolina at the gas station where it was towed by the tow truck and resume on my way to Florida.

That the owner consented to my continuing on my way to Florida.

That I forwarded my accident report to AAACON Auto Transport, Inc., in which I stated to them how the accident occurred.

That on or about August 25, 1971, pursuant to a message I received, I called collect to a Mr. Maxwell in New York City who told me that he was a representative of AAACON Auto Transport, Inc., and he stated that all things discussed in our present telephone conversation pertaining to the accident of August 21, 1971 he would deny outright if ever brought up, and he told me that he wanted me to send to him a new accident report which would state that the accident and the resultant property damage was caused by a mechanical defect in the car, a blowout in the right front tire. He further stated to me that if I did not fill out the accident report in this manner, his insurance carrier would come after me and really give me a hard time.

That I told him that I would fill out the accident report as he requested but, as of the date of this affidavit, I have not filled out nor forwarded the second accident report as requested by the representative of AAACON Auto Transport, Inc.

That I would like to state in closing that this accident was in no way caused by a mechanical defect nor operational defect of the car in which I was driving.

Daniel [illegible]

Sworn to before me this
___ day of October, 1971.

APPENDIX 1830a

E/133

AAACON AUTO TRANSPORT INC.

NEW YORK • LO 3-2222 147 West 42nd St.
CHICAGO • HA 7-0036 202 South State St.
DETROIT • 963-2111 1110 Shelby St.
PALM BEACH • 833-1671 120 S. Olive St.
ST. LOUIS • CE 1-7035 511 Locust St.
PHOENIX • 264-0201 222 West Osborn Rd.
BOSTON • KE 6-0120 230 Boylston St.
CLEVELAND • 781-6263 1857 E. 17 St.
MINNEAPOLIS • 336-8666 730 Hennepin Ave.
PHILADELPHIA • LO 4-4326 1612 Market St.
PITTSBURGH • 471-5144 717 Liberty Ave.

AAACON
AUTO TRANSPORT INC
1263 BANDERA ROAD
SAN ANTONIO, TEXAS 78228

LOS ANGELES • MA 4-6644 707 S. Broadway
ATLANTA • 523-7644 175 Peachtree N.E.
SAN DIEGO • 234-6511 235 Broadway
SAN FRANCISCO • 431-0664 1095 Market St.
ST. PETERSBURG • 896-4634 2422 Central Ave.
DALLAS • RI 2-4271 912 Commerce St.
FT. LAUDERDALE • 525-0491 200 E. Broward
SEATTLE • MU 2-2277 1904 3rd Ave.
MIAMI • 358-1226 10 N.E. 3rd Ave.
KANSAS CITY • HA 1-1300 1005 Grand Ave.
HOLLYWOOD, FLA. • 929-1261 1625 Tyler St.

BONDED and INSURED AUTOMOBILE TRANSPORTERS • OFFICES IN OVER 100 MAJOR CITIES USA

Mr. David Carlyle
Box 7403 University Station
Austin, Texas 78712

Re: Transporting [illegible] Mercury Cougar	
To Washington, D. C. from Austin, Texas	
At the Complete Price of: [illegible]	
Payable [illegible]	with your order and the
Balance of [illegible]	at destination

Your inquiry is sincerely appreciated. AAACON is the largest auto carrier licensed by the Interstate Commerce Commission providing complete delivery service for your automobile to or from every point in the United States. It operates the most modern facilities in the transportation industry. The rate quoted above, YOUR COMPLETE AND ONLY COST for transportation, is based upon specific tariffs filed with and approved by the Federal Government. YOU DO NOT PAY EXTRA for gas, oil, tolls or driver's expense, and the transportation of your car is fully supervised, not by some second or third party, but by us, AAACON AUTO TRANSPORT.

We fully insure your car in the amount of THREE MILLION DOLLARS for liability -- the most complete in the industry -- covering the transport of your car for bodily injury and property damage, door to door, and our collision coverage for your vehicle includes all deductible amounts. Each driver is bonded for the sum of $7,500. All this extra protection is in addition to your own insurance, and gives you DOUBLE PROTECTION at no extra cost.

Keep in mind that, next to your home, your car is your most valuable possession. Ask yourself: "Does the company shipping my car, have offices in every major city through which my car will travel?" AAACON is not an agent of some remote outside company, nor are we a group of two or more loosely connected offices organized under a trade emblem to look like a single company. When AAACON moves your car, you enjoy the security of knowing that your vehicle is in the hands of the largest national network -- one company concerned with your automobile with offices in every major city from coast to coast.

Our thousands of satisfied customers and many years of experience SERVING CAR OWNERS WITH CARE AND SAFETY attest to the fact that "the best costs no more." Simply fill in and mail the enclosed pink order form, including the date and place at which your car will be available, or just telephone us. Place your order now so that we have ample time to schedule a pick up and delivery date for your car. Thank you very much.

Very truly yours,
AAACON AUTO TRANSPORT, INC.

APPENDIX 1831

By A. C. [illegible]
Manager

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4142

75 Pine Grove Rd.
Berkeley Heights, N.J. 07922
August 27, 1970

Mr Bob Maxwell.
AAA Con Auto Transport, Inc.
147 W 42nd St.
New York, New York

Dear Mr Maxwell:

My automobile, a 1968 Cutlass was damaged in an accident on May 7, 1970 while being driven by AAACON's driver William Beck. (Bill of lading agreement number E 7414) The damages from this accident have been repaired by my insurance agency, CNA.

Since my insurance policy is $100 deductable I paid this amount toward the auto repair bill. In addition to this expense, a decorative flower pot, which was being transported in the trunk of my automobile, was broken in the accident. This pot may be replaced by a similar pot for $3.14.

In accordance with our telephone conversation I am requesting $103.14 remuneration for expenses and loss I have sustained as a result of the accident. I would appreciate your immediate consideration of this request.

Sincerely
Ray Rusi

E-150

STATE OF NORTH CAROLINA
COUNTY OF BURKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
70 CVS 1211

JESSE WILSON LEWIS,
Plaintiff,

-vs-

WILLIAM NELSON BECK; AAACON AUTO TRANSPORT, INC. OF SAN ANTONIO, TEXAS; AAACON AUTO TRANSPORT, INC. OF NEW YORK, NEW YORK; DRIVEAWAY COMPANY, INC.; RAY DEAN RUST,
Defendants.

AFFIDAVIT

RALPH J. ZOLA, being first duly sworn, deposes and says that:

1. That he is the Vice President of Aaacon Auto Transport, Incorporated of New York, New York, and as such officer is fully familiar with the operation, methods and office procedures of that company.

2. That Aaacon Auto Transport ~~is in the business of serving as a transportation broker.~~ assists people who wish to move their own cars. In this capacity, the company seeks to bring together car owners who wish to have their cars transported from one place to another and persons, who ~~for a fixed fee,~~ are willing to serve as drivers for those cars to get to their own destinations.

3. Aaacon attempts to locate drivers by advertising in newspapers for drivers, who then present themselves to the company offices. Aaacon does not, at any time, pay the drivers a fee

4. These drivers are paid a fee by the car owner when the cars are delivered to their destination and, pursuant to an agreement of May 4, 1970, Ray Dean Rust was to pay a fee to William L. Beck when he delivered Rust's automobile to Whippany, New Jersey.

5. Drivers located by Aaacon remain free to choose their own routes and times of travel. In the instant case, William Nelson Beck retained the right to make these decisions.

6. Drivers located by Aaacon pay their own expenses including gasoline, oil, tolls, food and lodging. In the present instance, William Nelson Beck was responsible for meeting his expenses of this nature and all other expenses incurred by him.

7. AAACON does not and did not in this instance attempt to inspect the vehicle, examine the contents, and assure delivery on any specified date.

8. That the agreement between these parties was embodied in the contract consisting of two documents, a "bill of lading agreement" and a "freight bill order form". That the originals of these documents have been lost, misplaced or destroyed, but that attached hereto are true copies of those documents, wherein all the parties agree that the driver (William Nelson Beck) is an independent contractor.

____
Affiant

SWORN TO AND SUBSCRIBED before me,
this the 20 day of December, 1971.

____
Notary Public
Notary Public State of New York

My Commission Expires: ____________
Commission Expires March [illegible], 1972

4133

Bureau of Enforcement
26 Federal Plaza
New York, N. Y. 10007

February 25, 1972

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

A-2904
A-2916

Morton E. Kiel, Esq.
140 Cedar Street
New York, N. Y. 10006

Re: Docket No. MC-C-7287
AAACon Auto Transport, Inc.--
Investigation and Revocation of Certificate

Docket No. MC-C-7287 (Sub No. 1)
AAACon Auto Transport, Inc.
Petition for Declaratory Order

Docket No. FF-359
Auto Trip USA, Inc.
Freight Forwarder Application
New York, New York

Dear Mr. Kiel:

Please be advised the Bureau intends to offer at the hearing herein in New York City, now scheduled for March 6, 1972, evidence concerning AAACon's practices in connection with its transportation in driveaway service of the used passenger automobile listed in the appendix attached hereto on the dates, from and to the points and for the shipper therein indicated. Such practices include, but are not limited to, said carrier's handling and treatment of loss and damage claims arising from said transportation and all practices related thereto, its issuance of and its practices in connection with bills of lading that contain unreasonable conditions and provisions and which incorporate provisions and conditions at variance with those of the Uniform Bill of Lading governing such transportation, and the carrier's holding out to the public regarding the driver to be provided by it, and the insurance coverage and bonding of drivers provided by it for said transportation, all of which practices the Bureau will contend have been and are in violation of Section 216(b), 219 and 20(11) of the Interstate Commerce Act.

[illegible]

[illegible] favorable [illegible]

[illegible] truly yours,

[illegible] Bre[illegible]
[illegible] Reg[illegible]

APPENDIX 1835

APPENDIX

DATE	CONSIGNOR ORIGIN	CONSIGNEE DESTINATION	DESCRIPTION OF AUTOMOBILE	BILL OF LADING NO.
5/5/70	Ray Rust Austin Texas	J. C. Vurgiel Whippany, N. J.	Oldsmobile Cutlass	E 7414

4156

AAACON AUTO TRANSPORT INC.

NEW YORK · LO 3-2222 142 West 42nd St
CHICAGO · HA 7-0086 202 South State St.
DETROIT · 963-2111 1110 Shelby St.
DENVER · 825-9191 1615 California St.
ST. LOUIS · CE 1-7035 511 Locust St.
PHOENIX · 264-0201 222 West Osborn Rd.
BOSTON · KE 6-0120 230 Boylston St.
CLEVELAND · 781-6263 1836 Euclid Ave.
WASHINGTON, D.C.-737-7030 1025 Vermont NW
PHILADELPHIA · LO 4-4326 1612 Market St.
PITTSBURGH · 471-5144 717 Liberty Ave.

NEW YORK
147 WEST 42 STREET
LO 3-2222

LOS ANGELES · MA 4-6644 707 S. Broadway
ATLANTA · 523-7644 2989 N. Fulton NE
SAN DIEGO · 234-6511 235 Broadway
SAN FRANCISCO · 431-0664 1095 Market St.
ST. PETERSBURG-896-4634 2422 Central Ave.
DALLAS · RI 2-4271 912 Commerce St.
FT. LAUDERDALE-525-0491 1806B E. Sunrise
SEATTLE · MU 2-2277 1904 3rd Ave.
MIAMI · 358-1226 10 N. E. 3rd Ave.
KANSAS CITY · HA 1-1300 6309 Morningside
HOLLYWOOD, FLA. -929-1261 1825 Tyler St.

BONDED AND INSURED AUTOMOBILE TRANSPORTERS • OFFICES IN ALL MAJOR CITIES U.S.A.

Re: Transporting	
To	
At the Complete Price of:	
Payable	with your order and the
Balance of	at destination

Your inquiry is sincerely appreciated. AAACON is the largest auto carrier licensed by the Interstate Commerce Commission providing complete delivery service for your automobile to or from every point in the United States. It operates the most modern facilities in the transportation industry. The rate quoted above, YOUR COMPLETE AND ONLY COST for transportation, is based upon specific tariffs filed with and approved by the Federal Government. YOU DO NOT PAY EXTRA for gas, oil, tolls or driver's expense, and the transportation of your car is fully supervised, not by some second or third party, but by us, AAACON AUTO TRANSPORT.

We insure your car in the amount of THREE MILLION DOLLARS for liability -- the most complete in the industry -- covering the transport of your car for bodily injury and property damage, door to door, and our collision coverage for your vehicle includes all deductible amounts. Each driver is licensed and bonded for the entire trip. All this extra protection is in addition to your own insurance, and gives you DOUBLE PROTECTION at no extra cost.

Keep in mind that, next to your home, your car is your most valuable possession. Ask yourself: "Does the company shipping my car, have offices in every major city through which my car will travel?" AAACON is not an agent of some remote outside company, nor are we a group of two or more loosely connected offices organized under a trade emblem to look like a single company. When AAACON moves your car, you enjoy the security of knowing that your vehicle is in the hands of the largest national network -- one company concerned with your automobile with offices in every major city from coast to coast.

Our thousands of satisfied customers and many years of experience SERVING CAR OWNERS WITH CARE AND SAFETY attest to the fact that "the best costs no more." Simply fill in and mail the enclosed pink order form, including the date and place at which your car will be available, or just telephone us. Place your order now so that we have ample time to schedule a pick up and delivery date for your car. Thank you very much.

Very truly yours,
AAACON AUTO TRANSPORT, INC.

By A. C. Backer
Manager

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5157

AAACON AUTO TRANSPORT INC.

NEW YORK - LO 3-2222	142 West 42nd St.
CHICAGO - HA 7-0086	202 South State St.
DETROIT - 963-2111	1110 Shelby St.
DENVER - 825-9191	1615 California St.
ST. LOUIS - CE 1-7035	511 Locust St.
PHOENIX - 264-0201	222 West Osborn Rd.
BOSTON - KE 6-0120	230 Boylston St.
CLEVELAND - 781-6263	1836 Euclid Ave.
WASHINGTON,D.C.-737-7030	1025 Vermont NW
PHILADELPHIA - LO 4-4326	1612 Market St.
PITTSBURGH - 471-5144	717 Liberty Ave.

NEW YORK

147 WEST 42 STREET

LO 3-2222

LOS ANGELES - MA 4-6644	707 S. Broadway
ATLANTA - 523-7644	2989 N. Fulton NE
SAN DIEGO - 234-6511	235 Broadway
SAN FRANCISCO - 431-0664	1095 Market St.
ST. PETERSBURG-896-4634	2422 Central Ave.
DALLAS - RI 2-4271	912 Commerce St.
FT.LAUDERDALE-525-0491	1806B E.Sunrise
SEATTLE - MU 2-2277	1904 3rd Ave.
MIAMI - 358-1226	10 N.E. 3rd Ave.
KANSAS CITY - HA 1-1300	6309 Morningside
HOLLYWOOD, FLA. -929-1261	1825 Tyler St.

BONDED AND INSURED AUTOMOBILE TRANSPORTERS • OFFICES IN ALL MAJOR CITIES U.S.A.

FREIGHT BILL – CAR OWNER'S COPY

REGISTERED CAR OWNER					
REGISTERED STREET ADDRESS					
REGISTERED CITY & STATE		TELEPHONE NUMBER			
CAR MAKE & YEAR		TYPE		MODEL DOOR	
LICENSE NUMBER		STATE		ENGINE OR SERIAL #	
POWER BRAKES		POWER STEERING		AUTOMATIC TRANSMISSION	
RADIO		HEATER		SPARE TIRE	
CONDITION OF TIRES		AIR CONDITION		COLOR	
CAR OWNERS INSURANCE CO.		INSURANCE POLICY #			

THE CAR OWNER AGREES TO PLAC
ALL LUGGAGE IN THE CAR TRUNK
ONLY. LUGGAGE LIST.

PICK UP DATE

PICK UP CAR FROM –

NAME

CAR WILL BE LOCATED AT – STREET ADDRESS

CITY & STATE

PHONE NUMBER

DELIVER CAR TO–

NAME

STATE ADDRESS

CITY & STATE

PHONE NUMBER

TOTAL PRICE $ AS FOLLOWS $ WITH THIS ORDER – BALANCE OF $

IN CASH TO DRIVER AT DESTINATION

SUBJECT TO AND INCORPORATING ALL PROVISIONS OF CARRIER'S BILL OF LADING WHICH IS REPRO-
DUCED ON REVERSE SIDE HEREOF.

SIGNED BY CAR OWNER (SHIPPER) OR HIS AGENT X

APPENDIX 1838

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PICK UP DATE

ESTIMATED DUE DATE

AAACON AUTO TRANSPORT, INC.

BILL OF LADING AGREEMENT

PICK UP CAR FROM-

CONSIGNEE -

REGISTERED CAR OWNER (SHIPPER)

REGISTERED ADDRESS

CITY & STATE

CAR MAKE

TYPE

MODEL DOORS

LICENSE #

AUTOMATIC TRANS.

POWER BRAKES

POWER STEERING

SERIAL #

CONDITION REPORT — ✓GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER		LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK **ONLY**
FRONT BUMPER		LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
FRONT GRILLE		L BODY SILL		R LIGHTS		RADIO		
FRONT LIGHTS		LR WINDOW		RR PANEL		HEATER		
HOOD		LR DOOR		RR WINDOW		UPHOLSTERY		
WINDSHIELD		LR PANEL		RR DOOR		KEYS		
LF FENDER		TRUNK LID		R BODY SILL		RR FENDER		
RF VENT WINDOW		R BUMPER		RF WINDOW		LR FENDER		
LF VENT WINDOW		R WINDOW		RF DOOR				

Shipper understands and agrees that shipper is responsible to tender the vehicle to carrier in good operating and mechanical condition. Shipper is solely responsible for all damages and liabilities arising from inherent mechanical or operational vice or defect in the vehicle in the absence of carrier fault. Carrier and shipper agree that no car rentals or any other special damages including, but not limited to those for non-use of the vehicle are within the contemplation of the parties for delay in delivery nor shall carrier be responsible therefor, unless notified thereof prior to tender of vehicle by shipper and said notice is acknowledged in writing by an officer of the carrier. Shipper understands and agrees that unless professional service is requested by shipper pursuant to Tariff MF ICC #7, carrier shall use casual drivers who are independent contractors. Shipper agrees to pay driver for necessary repairs to said vehicle of less than $25.00 without shipper's prior consent, and repairs in excess of $25.00 with shipper's prior consent. In the event of damage or loss to said vehicle, shipper shall retain all or part of driver's fee and forward same to carrier within seven days after said damage or loss occurs, or car is received, whichever is later. Payment to the driver by shipper or shipper's agent shall be evidence of satisfactory delivery of the vehicle. Should carrier be liable on account of loss or damage to any of said property, it shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the contracts of insurance, provided that carrier reimburse the claimant for the premium paid thereon. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. In any event personal property shall not exceed a designated value of $250. All terms and conditions of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be personally signed by and forwarded by the shipper to carrier. Shipper shall take all steps necessary to mitigate or recover damages from any third person liable therefor. Driver shall be responsible for all violations of law during the time that the vehicle is in his possession. Shipper agrees that driver may be accompanied by other authorized persons while transporting automobile. Driver and shipper consent to the personal jurisdiction of New York State and Federal Courts, and to service of process upon driver or shipper for commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading Agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or performance or breach thereof shall be settled by arbitration in New York City. Upon said arbitration, the arbitrator's jurisdiction shall be limited to enforcement and application, without exception, of the provisions of this agreement and, at the request of any party, of the rules and laws of evidence of the state in which said arbitration is held. Should the arbitrator vary or fail to apply and enforce, strictly, any provision of this agreement, or said rules and laws of evidence, for any reason whatsoever, said arbitrator shall be ousted of jurisdiction, and any award made by said arbitrator shall be null and void, and thereafter arbitration shall be recommenced in accordance herewith.

AGREEMENT UNDERSTOOD AND ACCEPTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT **X**	CONSIGNEE (SHIPPER'S AGENT) **X**
DRIVER	DRIVER RECEIVED FULL PAYMENT
DATE	DATE

TOTAL PAYMENT DUE AT DESTINATION $ ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION

NAME

ADDRESS

CITY

PHONE

I, THE DRIVER HAVE THIS DAY ____________

DEPOSITED WITH AAACON, THE TOTAL SUM OF

DOLLARS ($)

AS A BOND DEPOSIT.

SIGNED DRIVER

APPENDIX 1839

E1158

AAACON AUTO TRANSPORT INC.

NEW YORK - LO 3-2222 142 West 42nd St.
CHICAGO - HA 7-0086 202 South State St.
DETROIT - 963-2111 1110 Shelby St.
DENVER - 825-9191 1615 California St.
ST. LOUIS - CE 1-7035 511 Locust St.
PHOENIX - 264-0201 222 West Osborn Rd.
BOSTON - KE 6-0120 230 Boylston St.
CLEVELAND - 781-6263 1836 Euclid Ave.
WASHINGTON, D.C. - 737-7030 1025 Vermont NW
PHILADELPHIA - LO 4-4326 1612 Market St.
PITTSBURGH - 471-5144 717 Liberty Ave.

NEW YORK
147 WEST 42 STREET
LO 3-2222

LOS ANGELES - MA 4-6644 707 S. Broadway
ATLANTA - 523-7644 2989 N. Fulton NE
SAN DIEGO - 234-6511 235 Broadway
SAN FRANCISCO - 431-0664 1095 Market St.
ST. PETERSBURG - 896-4634 2422 Central Ave.
DALLAS - RI 2-4271 912 Commerce St.
FT. LAUDERDALE - 525-0491 1808B E. Sunrise
SEATTLE - MU 2-2277 1904 3rd Ave.
MIAMI - 358-1226 10 N.E. 3rd Ave.
KANSAS CITY - HA 1-1300 6309 Morningside
HOLLYWOOD, FLA. - 929-1261 1825 Tyler St.

BONDED AND INSURED AUTOMOBILE TRANSPORTERS • OFFICES IN ALL MAJOR CITIES U.S.A.

FREIGHT BILL—ORDER FORM

Kindly Fill Information Below — Sign and Mail This Copy to Us Immediately

REGISTERED CAR OWNER
REGISTERED STREET ADDRESS
REGISTERED CITY & STATE TELEPHONE NUMBER

CAR MAKE & YEAR	TYPE	MODEL DOOR
LICENSE NUMBER	STATE	ENGINE OR SERIAL #
POWER BRAKES	POWER STEERING	AUTOMATIC TRANSMISSION
RADIO	HEATER	SPARE TIRE
CONDITION OF TIRES	AIR CONDITION	COLOR

CAR OWNERS INSURANCE CO. INSURANCE POLICY #

THE CAR OWNER AGREES TO PLA
ALL LUGGAGE IN THE CAR TRUNK
ONLY. LUGGAGE LIST.

PICK UP DATE PICK UP CAR FROM —
NAME
CAR WILL BE LOCATED AT — STREET ADDRESS
CITY & STATE PHONE NUMBER

DELIVER CAR TO—
NAME
STATE ADDRESS
CITY & STATE PHONE NUMBER

TOTAL PRICE $ AS FOLLOWS $ WITH THIS ORDER — BALANCE OF $
IN CASH TO DRIVER AT DESTINATION

SUBJECT TO AND INCORPORATING ALL PROVISIONS OF CARRIER'S BILL OF LADING WHICH IS REPRO
DUCED ON REVERSE SIDE HEREOF.

SIGNED BY CAR OWNER (SHIPPER) OR HIS AGENT X

APPENDIX 1840

OR	FM	BM	CL

COPYRIGHT © AAACON AUTO TRANSPORT INC. ALL RIGHTS RESERVED - REPRODUCTION IN WHOLE OR IN PART PROHIBITED.

PICK UP DATE

ESTIMATED
DUE DATE

AAACON AUTO TRANSPORT, INC.

BILL OF LADING AGREEMENT

PICK UP CAR FROM-

CONSIGNEE -

REGISTERED CAR OWNER (SHIPPER)-

REGISTERED ADDRESS

CITY & STATE

CAR MAKE

TYPE

MODEL DOORS

LICEN

AUTOMATIC TRANS.

POWER BRAKES

POWER STEERING

SERIAL #

CONDITION REPORT — √GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER		LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK **ONLY**
FRONT BUMPER		LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
FRONT GRILLE		L BODY SILL		R LIGHTS		RADIO		
FRONT LIGHTS		LR WINDOW		RR PANEL		HEATER		
HOOD		LR DOOR		RR WINDOW		UPHOLSTERY		
WINDSHIELD		LR PANEL		RR DOOR		KEYS		
LF FENDER		TRUNK LID		R BODY SILL		RR FENDER		
RF VENT WINDOW		R BUMPER		RF WINDOW		LR FENDER		
LF VENT WINDOW		R WINDOW		RF DOOR				

Shipper understands and agrees that shipper is responsible to tender the vehicle to carrier in good operating and mechanical condition. Shipper is solely responsible for all damages and liabilities arising from inherent mechanical or operational vice or defect in the vehicle in the absence of carrier fault. Carrier and shipper agree that no car rentals or any other special damages including, but not limited to those for non-use of the vehicle are within the contemplation of the parties for delay in delivery nor shall carrier be responsible therefor, unless notified thereof prior to tender of vehicle by shipper and said notice is acknowledged in writing by an officer of the carrier. Shipper understands and agrees that unless professional service is requested by shipper pursuant to Tariff MF ICC #7, carrier shall use casual drivers who are independent contractors. Shipper agrees to pay driver for necessary repairs to said vehicle of less than $25.00 without shipper's prior consent, and repairs in excess of $25.00 with shipper's prior consent. In the event of damage or loss to said vehicle, shipper shall retain all or part of driver's fee and forward same to carrier within seven days after said damage or loss occurs, or car is received, whichever is later. Payment to the driver by shipper or shipper's agent shall be evidence of satisfactory delivery of the vehicle. Should carrier be liable on account of loss or damage to any of said property, it shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the contracts of insurance, provided that carrier reimburse the claimant for the premium paid thereon. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. In any event personal property shall not exceed a designated value of $250. All terms and conditions of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be personally signed by and forwarded by the shipper to carrier. Shipper shall take all steps necessary to mitigate or recover damages from any third person liable therefor. Driver shall be responsible for all violations of law during the time that the vehicle is in his possession. Shipper agrees that driver may be accompanied by other authorized persons while transporting automobile. Driver and shipper consent to the personal jurisdiction of New York State and Federal Courts, and to service of process upon driver or shipper for commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading Agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or performance or breach thereof shall be settled by arbitration in New York City. Upon said arbitration, the arbitrator's jurisdiction shall be limited to enforcement and application, without exception, of the provisions of this agreement and, at the request of any party, of the rules and laws of evidence of the state in which said arbitration is held. Should the arbitrator vary or fail to apply and enforce, strictly, any provision of this agreement, or said rules and laws of evidence, for any reason whatsoever, said arbitrator shall be ousted of jurisdiction, and any award made by said arbitrator shall be null and void, and thereafter arbitration shall be recommenced in accordance herewith.

AGREEMENT UNDERSTOOD AND ACCEPTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT **X**	CONSIGNEE (SHIPPER'S AGENT) **X**
DRIVER	DRIVER RECEIVED FULL PAYMENT
DATE	DATE

TOTAL PAYMENT DUE AT DESTINATION $ ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION
NAME
ADDRESS
CITY
PHONE

I, THE DRIVER HAVE THIS DAY
DEPOSITED WITH AAACON, THE TOTAL SUM OF
DOLLARS ($)
AS A BOND DEPOSIT.
SIGNED DRIVER.

APPENDIX 1841

172 (L) 41842 LEWIS BUSINESS FORMS INC. NEW YORK CITY N.Y. 4 3 2 1

#157-

PICK UP DATE

ESTIMATED
DUE DATE

AAACON AUTO TRANSPORT, INC. H 11222

BILL OF LADING AGREEMENT

PICK UP CAR FROM-

CONSIGNEE -

REGISTERED CAR OWNER (SHIPPER)

REGISTERED ADDRESS

CITY & STATE

CAR MAKE

TYPE

MODEL DOORS

LICENSE #

AUTOMATIC TRANS.

POWER BRAKES

POWER STEERING

SERIAL #

CONDITION REPORT – V GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER		LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK **ONLY**
FRONT BUMPER		LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
FRONT GRILLE		L BODY SILL		R LIGHTS		RADIO		
FRONT LIGHTS		LR WINDOW		RR PANEL		HEATER		
HOOD		LR DOOR		RR WINDOW		UPHOLSTERY		
WINDSHIELD		LR PANEL		RR DOOR		KEYS		
LF FENDER		TRUNK LID		R BODY SILL		RR FENDER		
RF VENT WINDOW		R BUMPER		RF WINDOW		LR FENDER		
LF VENT WINDOW		R WINDOW		RF DOOR				

Shipper guarantees the operating and mechanical condition of the above vehicle during transport, and assumes all responsibilities for damag and all liabilities arising therefrom. Regardless of cause, carrier shall not be liable for any damages or consequences from or for any delay i delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. Shipper agrees that driver i an independent contractor and agrees to pay driver for any necessary repairs to said vehicle of less than twenty dollars without shipper's consen and repairs in excess of twenty dollars with shipper's prior consent. In the event of damage or loss to said vehicle, shipper shall retain all o part of driver's fee required to pay for same; or, if said damage or loss shall exceed driver's fee, shipper shall forward driver's fee, constitutin final freight bill payment due, to carrier within seven days after said damage or loss occurs. Payment to driver by shipper or shipper's agent sha constitute conclusive evidence of satisfactory delivery of [illegible]. Retention of driver's fee, at shipper's option, beyond said seven day perio shall constitute conclusive evidence of full settlement and satisfaction of any claims against carrier by shipper and shipper's assigns. This agree ment and any shipment hereunder shall not operate as a waiver or avoidance of any contract of indemnity which shipper effected prior hereto or the obligations thereunder which shall devolve primarily upon the indemnitor, and said contract of indemnity shall be and remain in ful force and effect. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicl is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. All terms and condition of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be invalid and void unless personally signe by and forwarded by the shipper to carrier. The shipper shall commence any legal action necessary to mitigate or recover damages from any third party responsible, or any source liable, therefor. Any recovery by, or satisfaction of said damages to, shipper from any source liable o responsible to shipper therefor, shall, to the extent thereof, operate and constitute a discharge and release of said claims against carrier by shippe and shipper's assigns. Driver alone shall be responsible for all violations of law during the time that the vehicle is in his possession. Drive and shipper consent to the personal jurisdiction of New York State and Federal Courts, and to service of process upon driver or shippe for commencement of any action in connection herewith by certified mail addressed to his last known address within the United States This Bill of Lading Agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement betwee shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. This agreement sha be interpreted in accordance with the laws of New York State. Any claim or controversy, whether founded in contract or tort, arising ou of or relating to this agreement or performance or breach thereof, is non-assignable and shall be settled by arbitration in New York City Upon said arbitration, the arbitrator's jurisdiction shall be limited to enforcement and application, without exception, of the provisions o this agreement and, at the request of any party, of the rules and laws of evidence of the state in which said arbitration is held. Should th arbitrator vary or fail to apply and enforce, strictly, any provision of this agreement, or said rules and laws of evidence, for any reason wha soever, said arbitrator shall be ousted of jurisdiction, and any award made by said arbitrator shall be null and void, and thereafter arbitratio shall be recommenced in accordance herewith.

PICKED UP IN THE ABOVE CONDITION EXCEPT AS NOTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT X	CONSIGNEE (SHIPPER'S AGENT) X
DRIVER	DRIVER RECEIVED FULL PAYMENT
DATE	DATE

TOTAL PAYMENT DUE AT DESTINATION $ ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITIO

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION

NAME

ADDRESS

CITY

PHONE

APPENDIX 184/a

Void

5/162

172 © 42811 LEWIS BUSINESS FORMS INC. NEW YORK CITY N.Y. 4 3 2 1

PICK UP DATE	ESTIMATED DUE DATE	**AAACON AUTO TRANSPORT, INC.** BILL OF LADING AGREEMENT	J 3001

PICK UP CAR FROM-

CONSIGNEE -

REGISTERED CAR OWNER (SHIPPER)

REGISTERED ADDRESS

CITY & STATE

CAR MAKE

TYPE

MODEL DOORS

LICENSE #

AUTOMATIC TRANS.

POWER BRAKES

POWER STEERING

SERIAL #

CONDITION REPORT — √ GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER		LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK **ONLY**
RONT BUMPER		LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
RONT GRILLE		L BODY SILL		R LIGHTS		RADIO		
RONT LIGHTS		LR WINDOW		RR PANEL		HEATER		
HOOD		LR DOOR		RR WINDOW		UPHOLSTERY		
WINDSHIELD		LR PANEL		RR DOOR		KEYS		
LF FENDER		TRUNK LID		R BODY SILL		RR FENDER		
RF VENT WINDOW		R BUMPER		RF WINDOW		LR FENDER		
LF VENT WINDOW		R WINDOW		RF DOOR				

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AGREEMENT UNDERSTOOD AND ACCEPTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT X	CONSIGNEE. (SHIPPER'S AGENT) X
DRIVER	DRIVER RECEIVED FULL PAYMENT
DATE	DATE

TOTAL PAYMENT DUE AT DESTINATION $

ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION

NAME

ADDRESS

APPENDIX 1842

IMPORTANT DRIVER

I agree to check and fill if necessary water, oil, battery fluid, brake fluid, steering fluid-whenever I stop for gas. I agree to return this car to its destination clean inside. When I signed the driver application, I guaranteed to deliver this car to a stipulated delivery address and agreed that if I detour from the most direct route or delay in the delivery of this said car beyond

____

that I will be held for damages.

__________________________________ Driver

Date______________________

FOR YOUR OWN PROTECTION

Be sure to have the Bill of Lading signed by the receiver of the car and returned to our office immediately via air mail so that No Unwarranted Claims can be made. IN THE EVENT OF AN ACCIDENT, FAILURE TO SUBMIT AN ACCIDENT REPORT IMMEDIATELY WILL RESULT IN THE LOSS OF YOUR DRIVER'S LICENSE.

OFFICIAL WARNING

DETOUR, ABANDONMENT OR DELAY OF A VEHICLE IN INTERSTATE COMMERCE IS IMMEDIATELY REPORTED AS A STOLEN AUTOMOBILE TO THE

FEDERAL BUREAU OF INVESTIGATION

5165

DRIVERS STANDARD INSTRUCTIONS

AAACON AUTO TRANSPORT INC.

I. OPERATION OF VEHICLE

1. Observe all traffic laws, ordinances, and rules. Carrier and owner of vehicle assume no liability for fines or other costs.
2. Drive carefully and courteously.
3. Do not tow or push any other vehicle.
4. Nobody may be in the car except people named in the Driver's Agreement.

II. IN CASE OF ACCIDENT

1. Call police immediately, and write down name of police force and officer who comes to scene of accident.

2. Fill out Preliminary Report of Accident. This is the accident report form given to you by the carrier's Agent. Mail same day as accident to Carrier's Agent shown on Driver's Agreement. Be sure to identify which Insurance Company representative you call. Also complete any State accident form given you by the police and mail to Carrier's Agent.

3. Get full names of other parties involved in accident, as well as addresses, driver's license numbers, vehicle license numbers, and names and addresses of insurance carriers. Get names and addresses of all witnesses to accidents.

4. Write down date and time of accident, and exact street location and town where it happens.

5. After you have all your information call Carrier's insurance company. The number to call is shown on your accident report form and give complete details over the phone. In the event someone is killed or you feel an injured party may die later, or there is serious property damage and/or injuries, the insurance company will send an adjuster to the scene of the accident. Remain where you are until adjuster arrives. Do not continue on trip until all details are completed and you have been released by Carrier's Insurance Adjuster.

6. If repairs in excess of $20.00 are needed, contact Carrier's Agent and/or shipper by telephone and give full report.

7. Do not fail to show in the appropriate section of the Preliminary Report of Accident the number of hours you have been driving prior to accident.

III. NO LIQUOR, NARCOTICS, UNLICENSED GUNS, or other articles prohibited by law to be transported, may be carried on the person of the driver or in the vehicle.

IV. REQUIRED CARAVAN PERMITS or other licenses required to pass through any State must be obtained by the Driver immediately upon entry into such State.

V. NO ABANDONMENT. The vehicle shall not be abandoned nor stored in transit without permission of Carrier's Agent. Any abandonment will result in legal action against Driver.

VI. APPLICABLE ICC REGULATIONS

192 – Driving of Motor Vehicles

192.3 Must drive in accordance with laws, ordinances, and regulations of the jurisdiction in which vehicle is being operated.

192.4 Must not drive while your ability or alertness is impaired through fatigue, illness, or any other cause as to make it unsafe to begin or continue to drive.

192.5 Must not drive when under the influence of any alcoholic beverages or liquor, regardless of its alcoholic content, nor drink any such beverage while on duty.

192.6 Must not drive at speeds greater than those prescribed by the jurisdictions in or through which vehicle is being operated.

192.7 No driver shall drive a motor vehicle unless driver has satisfied himself that the following parts and accessories are in good working order: service brakes, parking (hand) brake, steering mechanism, lighting devices, tires, horn, windshield wipers, rear vision mirrors.

192.11 and 192.13. You are required to slow down at all railroad crossings (and drawbridges) and drive at a rate of speed which will permit your vehicle to be stopped before reaching nearest rail of such crossing (or lip of the drawbridge) and shall not proceed over such crossing until due caution has been taken to ascertain that course is clear (or when draw of drawbridge is completely closed).

192.14 Extreme caution must be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visability or traction. Speed shall be reduced when such conditions exist. If conditions become dangerous, the operation of the vehicle shall be discontinued and not resumed until vehicle can be safely operated.

192.15 (a) Every motor vehicle turn shall be signalled not less than 100 feet in advance of and during turning movement by flashing turn signals at the front and rear. (b) Turn signals shall be flashed prior to and during entry into traffic stream. (c) Turn signals shall be flashed in advance of and during turning movement from one traffic lane to another. (d) Turn signals shall not be flashed one one side only on parked or disabled vehicles. (e) Turn signals shall not be used as courtesy or "do pass" signals to operators of vehicles approaching from the rear.

192.20 No motor vehicle shall be left unattended until parking brake has been securely set and all reasonable precautions taken to prevent movement of vehicle.

190.21 No motor vehicle shall be stopped, parked or left standing, whether attended or unattended, upon the travelled portion of any highway.

193.30 No vehicle shall be driven upon highway unless required lamps are lighted, (a) during the period of one-half hour after sunset to one-half hour before sunrise; (b) during any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet.

192.32 Upper beams to be used when there is no oncoming vehicle within 500 feet. When within 500 feet of oncoming vehicle, use lower headlight beams and also use when following another vehicle within 500 feet.

192.40 When involved in an accident involving injury, death, or property damage of any kind, regardless of the amount, you shall (a) stop immediately; (b) take necessary precautions to prevent further accidents; (c) render all reasonable assistance to injured persons. Do not move an injured person if likely to cause further injury; (d) give to any person demanding the same, your name and address, the name and address of the Carrier's Agent, the state license number on your vehicle, and if requested exhibit your operator's license; (e) report all details of accident as prescribed herein above under section II.

192.41 If you strike a vehicle standing unattended upon a highway, you are to endeavor to locate the custodian of the vehicle. if unsuccessful, you shall place securely and conspicuously in or on unattended vehicle your name and address and name and address of Carrier's Agent.

192.50 (a) You must not fuel your vehicle with the engine running; (b) smoke in the vicinity of vehicle being fuelled; (c) permit insofar as practicable any other person to engage in activities likely to result in fire or explosion.

192.60 Must not transport any person in your vehicle unless specifically authorized in writing by Carrier's Agent.

I have been given an explanation of the driver's instructions and have also received a copy of the above instructions and agree to obey them.

APPENDIX 1844

Signed: ______________________________ Driver–Date ______________________________

4166

FROM________________________

____

____

No
Postage Stamp
Necessary
If Mailed in the
United States

BUSINESS REPLY MAIL
First Class Permit No. 26399, New York, N. Y.

AAACON AUTO TRANSPORT, INC.
147 West 42nd Street
New York, N. Y. 10036

5/1/67

UTOMOBILE ACCIDENT REPORT

Please complete in detail, giving direction of cars estimated speed of each and statements made by parties immediately after accident

PROTECT YOUR LICENSE

Complete and Return to
Aaacon office of origin
in envelope provided.

YOUR VEHICLE–No. 1

NAME OF OWNER OF CAR
BILL OF LADING #

NAME OF DRIVER
AGE
BUSINESS PHONE NO. (   )
HOME PHONE NO. (   )

STREET ADDRESS
CITY
ZONE
STATE

MAKE, YEAR, MODEL
LICENSE NUMBER
STATE

DESCRIBE DAMAGE
ESTIMATED REPAIR COST

WHERE MAY CAR BE SEEN?

STREET ADDRESS
PHONE NO. (   )

CITY
ZONE
STATE

WERE POLICE NOTIFIED? ☐ YES ☐ NO
NAME OF POLICE DEPARTME

CITY/TOWN POLICE (   )
STATE HIGHWAY PATROL (   )
TURNPIKE POLICE (   )
SHERIFF'S OFFICE (   )
OFFICER'S NAME
BADGE No.

WAS EITHER DRIVER CITED (   ) # 1 (   ) # 2
POLICE OR OFFICR'S ACCIDENT NO.

ATE OF ACCIDENT
TIME AM PM
PLACE OF ACCIDENT
STATE
CITY
COUNTRY

TREET OR HIGHWAY ROUTE OR NAME)
AT ☐
NEAR ☐
(Intersecting street or highway, house number bridge railroad crossing, or other landmark)

ONTRIBUTING CAUSES OF ACCIDENT:

VEHICLE DEFECTS. ☐ TIRES ☐ BRAKES ☐ STEERING. ☐ LIGHTS. ☐ ENGINE. ☐ WHEEL OR PART

WEATHER. ☐ RAIN. ☐ SNOW. ☐ FOG. ☐ SLEET. ROADWAY. ☐ ICY. ☐ OILY. ☐ WET. ☐ SNOWY. ☐ MUDDY.

OTHER

OTHER CAR VEHICLE–No. 2

DESCRIBE DAMAGE (IF ANY) TO OTHER CAR
MAKE, YEAR, MODEL, LICENSE NUMBER
STATE

DRIVER'S NAME AND ADDRESS
LICENSE NUMBER
STATE

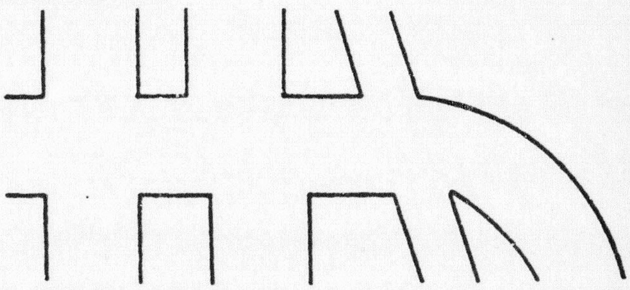
CITY
ZONE
STATE

OWNER'S NAME AND ADDRESS
PHONE NO. (   )

CITY
ZONE
STATE

DESCRIPTION OF ACCIDENT

USE PORTION OF DIAGRAM WHICH BEST ILLUSTRATES PLACE WHERE ACCIDENT OCCURRED. FILL IN NAME OF STREETS. INDICATE POSITION AND DIRECTION OF TRAVEL → OF EACH CAR. USE "X" TO INDICATE PEDESTRIANS.



INJURED

IN YOUR CAR	IN OTHER CAR	PEDESTRIAN	NAME AND ADDRESS	APPARENT AGE	NATURE OF INJURIES	AREA CODE	PHONE NO.
						( )	
						( )	
						( )	

If more than one other vehicle was involved, or you can obtain the Names, Addresses and phone numbers of any witnesses, List same on the reverse side of this report

SIGNATURE

PHONE (212) 233-8500

ORIGINAL

INTERSTATE MOTOR CARRIERS AGENCY
INSURANCE
280 BROADWAY NEW YORK, N. Y. 10007

ASSURED NO. 0011

INVOICE DATE 1/10/72

Aaacon Auto Transport, Inc.
147 West 42nd Street
New York, New York 10036

NAME OF INSURED IF DIFFERENT FROM NAME ABOVE →

POLICY NO.	POLICY TERM	EFFECTIVE DATE	EXPIRATION DATE	RENEWAL OF POLICY NUMBER	INVOICE NUMBER
APR323305	1 Yr.	11/11/71	11/11/72	APR208456	N 102

COMPANY	DESCRIPTION OF COVERAGE	POLICY LIMITS	PREMIUM
Home Ind.	Auto Liability		
	Each Person	$25,000-	
	Each Accident	100,000-	
	Property Damage	10,000-	
	Rate per Car $3.59		
	*Advance by I.M.C.A.as per agreement		
		Advance	$61,030.00
		Less Prem. Adj.	[illegible]
		Net	$54,561.00
		Paid	[illegible]
		* Balance	$25,000.00

IMPORTANT: INSTALLMENTS ARE DUE AND PAYABLE →

	DATES		PREMIUM	DATES		PREMIUM	DATES		PREMIUM	DATES		PREMIUM
		A			D			G			J	
		B			E			H			K	
		C			F			I			L	

PHONE BEEKMAN 3-8500

CABLE ADDRESS INTCARRIER

INTERSTATE·MOTOR·CARRIERS·AGENCY
Insurance
280 BROADWAY
NEW YORK. N. Y. 10007

January 11th, 1972

Mr. Ralph Zola
Aaacon Auto Transport, Inc.
147 West 42nd Street
New York, New York 10036

RENEWAL
MEMO

Policy No APR-323305 Insurance Co. Home Ind.

Type of Coverage Auto Liability

We enclose the above policy, which renews Policy No. APR-208456

of the Same for a period of One Year

to expire 11/11/72.

Should there be any question, please let us know at once.

Premium statement is attached.

We thank you for favoring us with this business.

APPENDIX 1848

AUTOMOBILE LIABILITY POLICY

STOCK COMPANY

The HOME Indemnity Company
New York, N.Y.

No. AP R 32 [illegible]

DECLARATIONS

Item 1. Named Insured and Address:

AAA Con Auto Transport Inc.
147 West 42nd Street
New York, N.Y.

INTERSTATE MOTOR
CARRIERS AGENCY
INSURANCE
200 BROADWAY NEW YORK 7, N.Y.
Phone BEekman 3-[illegible]

Item 2.
Inception 11-11-71 (Mo. Day Yr.) Expiration 11-11-72 (Mo. Day Yr.) Producer No. - OPC 43000- 195 my

12:01 A.M., standard time at the address of the named insured as stated herein.

The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein.

Occupation of the named insured is: (If married woman, give husband's occupation or business)

Driveway Operations- Used Cars

Designation of insured for purposes of division 2 of coverage C, if required by Insuring Agreement III:

Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the Company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

	COVERAGES	LIMITS OF LIABILITY		PREMIUMS CAR 1	PREMIUMS CAR 2
A	Bodily Injury Liability	25	thousand dollars each person		
		100	thousand dollars each accident	$46,070.00	$
B	Property Damage Liability	10	thousand dollars each accident	$14,960.00	$
C	Automobile Medical Payments		dollars each person	$	$

Endorsements
AL6732A, AL6574[illegible], GU6691c

TOTAL POLICY PREMIUM $61,030.00

Item 4. Description of the automobile

CAR	MODEL YEAR	TRADE NAME, BODY TYPE, TRUCK SIZE, TRUCK LOAD CAPACITY, TANK GALLONAGE CAPACITY OR BUS SEATING CAPACITY	IDENTIFICATION NUMBER	CLASS AND SUR-CHARGE
1		Driveway Operations Coverage		Class 762
2				Terr-3118

Item 5. The purposes for which the automobile(s) is (are) to be used are "pleasure and business," unless otherwise stated herein:

(a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in Item 2, including use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

Item 6. Unless otherwise stated herein: (a) except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the named insured is the sole owner of the automobile; (b) during the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder.

Assigned Risk

Countersigned at	Date	Signature of Authorized Representative
New York, N.Y.	1-5-72	

H 6085 F 8/70

APPENDIX 1849

… same household … and a trailer or trailers attached
as the named insured, to a partnership in which such resident … thereto shall be held to be one automobile as respects limits

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR BODILY INJURY LIABILITY, AND PROPERTY DAMAGE LIABILITY UNDER CHAPTER 154 OF THE NEW MEXICO LAWS OF 1933 AS AMENDED

The policy to which this endorsement is attached is an automobile bodily injury liability and property damage liability policy, and is hereby amended to assure compliance by the Insured, as a motor carrier of passengers or property with Chapter 154 of the New Mexico Laws of 1933 as amended, and the pertinent rules and regulations of the New Mexico State Corporation Commission.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay any final judgment recovered against the Insured for bodily injury to or the death of any person or loss of or damage to property of others (excluding injury to or death of the Insured's employees while engaged in the course of their employment, and loss of or damage to property of the Insured, and property transported by the Insured, designated as Cargo), resulting from the negligent operation, maintenance, or use of motor vehicles under certificate of public convenience and necessity, certificate of registration, and contract motor carrier permit issued to the Insured by the New Mexico State Corporation Commission under Chapter 154 of the New Mexico Laws of 1933 as Amended, within the limits of liability hereinafter provided, regardless of whether such motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the Company to pay any such final judgment recovered against the Insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment. The bankruptcy or insolvency of the Insured shall not relieve the Company of any of its obligations hereunder. The liability of the Company extends to such losses, damages, injuries, or deaths, whether occurring on the route or in the territory authorized to be served by the Insured or elsewhere, within the boundaries of the State of New Mexico.

The liability of the Company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder.

SCHEDULE OF LIMITS

MOTOR CARRIERS—BODILY INJURY LIABILITY—PROPERTY DAMAGE LIABILITY

(1) Kind of Equipment	(2) Limit for bodily injuries to or death of one person.	(3) Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a minimum of $10,000 for bodily injuries to or death of one person).	(4) Limit for loss or damage in any one accident to property of others (excluding cargo).
Passenger equipment (seating capacity):			
7 passengers or less	$10,000	$20,000	$1,000
8 to 12 passengers, inclusive	$10,000	$30,000	$1,000
13 to 20 passengers, inclusive	$10,000	$45,000	$1,000
21 to 30 passengers, inclusive	$10,000	$60,000	$1,000
31 passengers or more	$10,000	$75,000	$1,000
Freight equipment: All motor vehicles used in the transportation of property	$10,000	$20,000	$1,000

Nothing contained in the policy or any other endorsement thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon, by the Insured shall relieve the Company from liability hereunder or from the payment of any such final judgment.

The Insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim or suit involving a breach of the terms of the policy for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

This endorsement may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be affected by the Company or the Insured giving thirty (30) days' notice in writing to the New Mexico State Corporation Commission at its office in Santa Fe, New Mexico, said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.

Attached to and forming part of Policy No. APR 32 33 05 issued by the Home Indemnity

(herein called Company) of New York to AAA Con Auto Transport Inc.

Dated at New York this 11 day of November, 19 71

Countersigned by ______________________
Authorized New Mexico Agent

NEW MEXICO FORM M. T. D. 1

APPENDIX 1850

NBCU-2821C
(12-1-62)

Form B M C 90

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE LIABILITY UNDER SECTION 215 OF THE INTERSTATE COMMERCE ACT

The policy to which this endorsement is attached is an automobile bodily injury and property damage liability policy and is hereby amended to assure compliance by the insured, as a motor carrier of passengers or property, with Section 215 of the Interstate Commerce Act and the pertinent rules and regulations of the Interstate Commerce Commission.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay, within the limits of liability hereinafter provided, any final judgment recovered against the insured for bodily injury to or death of any person, or loss of or damage to property of others (excluding injury to or death of the insured's employees while engaged in the course of their employment, and property transported by the insured, designated as cargo), resulting from negligence in the operation, maintenance, or use of motor vehicles under certificate of public convenience and necessity or permit issued to the insured by the Interstate Commerce Commission, or otherwise in transportation in interstate or foreign commerce subject to part II of the Interstate Commerce Act, regardless of whether such motor vehicles are specifically described in the policy or not.

The liability of the Company extends to such bodily injuries and deaths and losses and damages whether occurring on the route or in the territory authorized to be served by the insured or elsewhere.

Within the limits of liability hereinafter provided it is further understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company, and the insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is understood and agreed that, upon failure of the Company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment.

The limits of the Company's liability for the amounts provided in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the Company for the payment of final judgments resulting from any other accident.

The Company shall not be liable for amounts in excess of the following for each accident:

SCHEDULE OF LIMITS

Motor Carriers-Bodily Injury Liability-Property Damage Liability

(1) Kind of Equipment	(2) Limit for bodily injuries to or death of one person	(3) Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $25,000 for bodily injuries to or death of one person)	(4) Limit for loss or damage in any one accident to property of others (excluding cargo)
Passenger Equipment (seating capacity)			
Seven passengers or less	$25,000	$100,000	$10,000
8 to 12 passengers, inclusive	25,000	150,000	10,000
13 to 20 passengers, inclusive	25,000	200,000	10,000
21 to 30 passengers, inclusive	25,000	250,000	10,000
31 passengers or more	25,000	300,000	10,000
Freight Equipment			
All motor vehicles used in the transportation of property	$25,000	$100,000	$10,000

Whenever required by the Commission, the Company agrees to furnish to the Commission a duplicate-original of said policy and all endorsements thereon.

This endorsement may not be canceled without cancelation of the policy to which it is attached. Such cancelation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the Interstate Commerce Commission at its office in Washington, D. C., said thirty (30) days' notice to commence to run from the date notice is actually received in the office of said Commission.

Attached to and forming part of policy No. APR 32 23 03 issued by

Home Indemnity (herein called Company)

of New York to AAA Con Auto Transport of New York

Dated at New York this 22 day of November, 19 71

ENDORSEMENT

COVERING PERSONS AND PROPERTY EXCEPT CARGO

The policy to which this endorsement is attached is written pursuant to and is to be construed in accordance with Chapter 323, Florida Statutes, and the rules and regulations of the Florida Public Service Commission adopted thereunder. The purpose of this endorsement is to make certain during the term of said policy and any renewal thereof the liability of the company to any person injured in person or property by negligence of the insured as hereinafter set forth.

In consideration of the premiums stated in the policy to which this endorsement is attached, the company agrees to pay the judgment creditor any final judgment rendered against the insured upon a liability hereunder within the limits set forth in the schedule shown hereon and further agrees that upon its failure to pay any such final judgment, such judgment creditor may maintain an action against the company in the proper court to compel such payment.

And the said company for the consideration aforesaid by the policy of insurance to which this endorsement is attached, hereby insures and agrees to indemnify the insured during the term of said policy or any renewal thereof, against loss sustained by reason of bodily injury to or the death of any person or loss of or damage (in excess of $50.00) to property of others (excluding injury to or death of the insured's employees while engaged in the course of their employment, and, loss or damage to property of the insured, and property transported by the insured, designated as cargo) while operating as an auto transportation company the motor vehicle or vehicles, trailer or trailers enumerated in the schedule of statements, or any substituted or emergency vehicle, under and in accordance with a certificate of public convenience and necessity, certificate of registration or permit issued by the Florida Public Service Commission, notwithstanding, and, in addition to liability risks of a different character, if any, provided for in said policy.

No condition, provision, stipulation or limitation contained in the policy or any other endorsement thereon, nor the violation of any of the same by the insured shall affect any way the right of any persons injured in person or property by the negligence of the insured or relieve the company from the liability provided for in this endorsement, or from the payment to such person of any such judgment within the limits set forth in the schedule shown hereon; but the conditions, provisions, stipulations and limitations contained in the policy, and any other endorsements thereon, shall remain in full force and be binding as between the insured and the company.

The policy to which this endorsement is attached shall not expire nor shall cancellation take effect until after thirty (30) days notice in writing by the company shall have first been given to the Florida Public Service Commission at its office in Tallahassee, Florida, said thirty (30) days notice to commence to run, from the date the notice is actually received at the office of the Commission

Attached to and forming part of Policy No. APK 32 33 05, issued by the

Home Indemnity

Insurance Company to AAA Con Auto Transport Inc.

Dated at New York this 11 day of November, 1971

Authorized Agent

IRB 3642 B

APPENDIX 1852

Public
Personal Liability
and
Property Damage
(Passenger Vehicles only)

MCF 14

MOTOR VEHICLE FORM
INSURANCE POLICY ENDORSEMENT

The policy to which this endorsement is attached is written under and pursuant to the provisions of O. S. 1968, Tit. 47, Secs. 161-180n, inclusive, and it is to be construed in accordance therewith and the rules and regulations of the Corporation Commission of Oklahoma and implies an acceptance of such rules and regulations, and is payable to the State of Oklahoma for the benefit of all persons who may suffer personal injuries, including death, or property damage due to any negligence of the assured, his/its agents, employes or representatives in the operation or use of any motor vehicle under Certificate of Public Convenience and Necessity (or Permit) No. MC __________.

In consideration of the premium stipulated in the policy to which this endorsement is attached the insurer hereby waives description of the motor vehicle operated or used under said certificate or permit and agrees to pay any final judgment rendered against the holder of such certificate or permit for personal injuries, including death, or damage to property other than that of the holder of said certificate or permit, due to the negligence of said holder, his/its agents, or employes, or representatives, in the operation or use of any motor vehicle, whether listed in the original schedule of motor vehicles filed with the original application or whether it be an additional, substitute or emergency vehicle operated under said certificate or permit by any order or rule of the Corporation Commission within the limits of the schedule hereinafter set out, and further agrees that, upon its failure to pay any such final judgment within 60 days from the date of its rendition or final affirmance on appeal, the judgment creditor may maintain an action against it in any court of competent jurisdiction to enforce such payment. This policy shall be a continuing indemnity. The indemnity thereof shall not be reduced as to any succeeding accident by any payment of any claim or by any judgment on any previous accident. Nothing contained in the policy or any endorsement thereon, nor the violation of any of the provisions thereof or of any law of the State by the assured shall relieve the insurer from any liability hereunder or from the payment of any such judgment.

No condition, provision, stipulation or limitation contained in the policy or any other endorsement thereon, nor the violation of any of the same by the insured shall affect in any way the right of any person injured in his person or property by the negligence of the insured or relieve the company from the liability provided for in this endorsement, or from the payment to such person of any such judgment, to the extent and in the amounts set forth in the schedule shown herein; but the conditions, stipulations and limitations contained in the policy and any other endorsements thereon shall remain in full force and be binding as between the insured and the company.

SCHEDULE

On each motor vehicle used for the transportation of passengers, or property, or both, the insurer shall be liable to each person suffering damages as the result of any accident due to the negligence of the assured, his agents or representatives in the use or operation of such motor vehicle to the extent of damages sustained, not exceeding $10,000.00 and subject to the same limit, the total liability of the insurer on account of any one accident shall not exceed the following schedule, depending upon the seating capacity of the vehicle, to wit: 0-7 passengers $50,000.00, 8-12 passengers $150,000.00, 13-20 passengers $200,000.00, 21-30 passengers $250,000.00, 31 or more passengers $300,000.00.

It is understood and agreed that the words "damage to property", as used in this endorsement, shall be construed to cover any and all property of passengers while carried in or upon the insured motor vehicle, but shall not include property (usually designated as "cargo") loaded for shipment or in transit by the insured, provided that this liability for property damage under this policy shall not exceed $5,000.00 for any one accident.

In the event of the insolvency or bankruptcy of the insured the insurer shall not be relieved of the payment of such indemnity hereunder as would have been payable but for such insolvency or bankruptcy.

Any provision either in the body of the policy to which this endorsement is attached or in any other endorsement thereon or attached thereto in conflict with or contrary to the provisions of this endorsement shall be deemed to be cancelled hereby.

The policy to which this endorsement is attached shall not terminate either by expiration or cancellation until notice is received, as provided by law, of such termination in writing by the insurer to the Corporation Commission of Oklahoma.

Attached to and forming a part of Policy No. APR 32 33 05 issued by

Home Indemnity to AAA Con Auto Transport Inc.
(Name of Insurer) *(Name of Insured)*

Home Indemnity

(Signature of Insurer)

IRB 3887A

NON-PREMIUM ENDORSEMENT Endorsement No. 1

Issued by –

☐ THE HOME INSURANCE COMPANY ☒ THE HOME INDEMNITY COMPANY

POLICY NUMBER: APR 32 33 05

NAMED INSURED: AAA Con Auto Transport Inc.

EFFECTIVE DATE: 11-11-71

DATE PREPARED: 1-5-72 my

PRODUCER: Interstate Motor Carriers Agency

PRODUCER NO. – OPC: 43000-195

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

It is agreed that the insuring agreement is amended to read as follows: It is agreed that such insurance as is afforded by the policy for Bodily Injury, Liability and Property Damage Liability applies with respect to any automobile while being delivered to a specific location by the named insured.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22301 F 7/68

APPENDIX 1854

BASIC

use to
sehold

OMOBILE
lity)

AL 6732a
(Ed. 4-55)

A374a

DRIVE-AWAY CONTRACTOR (2)

This endorsement, effective 11-11-71 (12:01 A. M., standard time), forms a part of policy No. APR 32 33 05

d to AAA Con Auto Transport Inc.

The Home Ind. Co.

SCHEDULE

he insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium arge or charges.

ypes of Automobiles Driven	Estimated Number of Automobiles to be Driven During the Policy Period	Rate Per Automobile		Advance Premiums	
		Coverage A	Coverage B	Coverage A	Coverage B
Priv. Pass.	17,000.	2.71	.88	46,070.	14,960.

mum Premiums:
odily Injury Liability $
operty Damage Liability $

Total Advance Premiums $46,070. $ 14,960.

is agreed that such insurance as is afforded by the policy for Bodily Injury Liability and for Property Damage Liability applies respect to the use of any automobile being driven by or in behalf of the named insured from the factory or other wholesale ibuting point to the purchaser or for storage, subject to the following provisions:

Division (a) (1) of the Definition of Insured agreement of the policy does not apply.

The insurance does not cover as an insured any person or organization, or any agent, employee or contractor thereof, other than the named insured, who is required to carry automobile liability insurance under any motor carrier law because of transporting property for the named insured or for others.

This endorsement does not apply to any automobile while used for the towing of any trailer.

The premium for this insurance is based on the number of automobiles so driven during the policy period.

The premium stated in the schedule forming a part hereof is an estimated premium only. Upon termination of the policy, the earned premium for this insurance shall be computed by the application of the rates stated in the schedule to the number of automobiles so driven during the policy period, but such premium shall not be less than the minimum premium stated in the schedule. If the earned premium thus computed exceeds the estimated advance premium paid for this insurance, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

The named insured shall maintain records of the number of automobiles so driven during the policy period, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct.

. The company may be permitted to inspect the insured's operations and to examine and audit the insured's books and records at any time during the policy period and any extension thereof and within three years after the final termination of this policy, as far as they relate to the premium bases or the subject matter of this insurance.

THENTIC

Authorized Representative

APPENDIX 1855

(Ed. 11-59)

use to
usehold

PREMIUM DISCOUNT ENDORSEMENT — NEW YORK

(Automobile and General Liability Insurance)

This endorsement, effective 11-11-71 (12:01 A. M., standard time), forms a part of policy No. APR 32 33 05

issued to AAA Con Auto Transport Inc.

by The Home Ind. Co.

It is agreed that the premium pertaining to New York for Liability and Medical Payments insurance is subject to discount in accordance with the following procedure:

1. **New York Standard Premium.** Such premium pertaining to New York computed in accordance with the provisions of the policies designated in paragraph 5 hereof, other than this endorsement and exclusive of the application of any retrospective rating plan, shall be known as the New York Standard Premium.
2. **Total Standard Premium For All States.** The Liability and Medical Payments premium computed in accordance with the provisions of the policies designated in paragraph 5 hereof, other than this endorsement and exclusive of the application of any retrospective rating plan, any Automatic Premium Adjustment Endorsement, any Premium Return Plan Endorsement, or other Premium Discount Endorsement, shall be known as the Total Standard Premium.
3. **Premium Discount—New York**
   - (a) **For policy periods of one year or less**—The New York Standard Premium, exclusive of any premium subject to any retrospective rating plan, shall be subject to the applicable discount percentages for the Total Standard Premium obtained from the Table of "New York Premium Discounts."
   - (b) **For policy periods of more than one year**—The New York Standard Premium, exclusive of any premium subject to any retrospective rating plan, shall be subject to the applicable discount percentages stated in said Table of "New York Premium Discounts" opposite the average annual total standard premium for the policies which shall be determined by dividing the Total Standard Premium for the policy period by the term of said policies in years and fractions thereof.
   - (c) If retrospective rating is applicable to a part of the premium pertaining to New York, the amount of premium discount applicable to the New York Standard Premium, exclusive of any premium subject to any retrospective rating plan, shall be the difference between (1) the discount determined by applying to the New York Standard Premium the applicable percentages stated in said Table opposite the Total Standard Premium and (2) the discount determined by applying to that portion of the New York Standard Premium which is subject to retrospective rating the applicable percentages stated in said Table opposite so much of the Total Standard Premium as is subject to retrospective rating.
   - (d) The provisions of this endorsement shall not apply in the event the New York Standard Premium is $100 or less and in no event shall the application of the provisions of this endorsement result in an earned premium of less than $100 as applicable to New York.
4. **Table—New York Premium Discounts**

Premium Discount Percentages Applicable to New York Standard Premium

Total Standard Premium (See Note 1) (1)	General Liability (2)	Automobile Liability for Garages (3)	Taxis, Livery, Buses and Long Haul Truckmen (4)	All Other Automobile Liability (5)	Total Standard Premium (See Note 1) (1)	General Liability (2)	Automobile Liability for Garages (3)	Taxis, Livery, Buses and Long Haul Truckmen (4)	All Other Automobile Liability (5)
$1,000 or less	0.0%	0.0%	0.0%	0.0%	$1,500	3.6%	1.7%	0.3%	1.5%
1,050	0.7	0.3	0.1	0.3	1,550	3.8	1.8	0.4	1.6
1,100	1.2	0.6	0.1	0.5	1,600	4.0	1.9	0.4	1.7
1,150	1.6	0.7	0.1	0.7	1,650	4.2	2.0	0.4	1.8
1,200	1.9	0.9	0.2	0.8	1,700	4.4	2.1	0.4	1.9
1,250	2.3	1.1	0.2	1.0	1,750	4.6	2.2	0.4	2.0
1,300	2.6	1.2	0.2	1.1	1,800	4.7	2.3	0.5	2.0
1,350	2.9	1.4	0.3	1.2	1,850	4.9	2.3	0.5	2.1
1,400	3.1	1.5	0.3	1.3	1,900	5.0	2.4	0.5	2.2
1,450	3.4	1.6	0.3	1.4	1,950	5.2	2.5	0.5	2.2

(TABLE CONTINUED ON REVERSE SIDE)

5.

Policy Numbers	Estimated Standard Premium
APR 32 33 05	$ 61,030.00

Total $

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitations of the policy or any endorsement attached thereto, except as herein set forth.

Authorized Representative

AUTHENTIC

(over)

APPENDIX 1856

V. Use of Other Automobiles: If the named insured is an individual r husband and wife and if during the policy period such named insured, r the spouse of such individual if a resident of the same household, wns a private passenger automobile covered by this policy, such insur-nce as is afforded by this policy with respect to said automobile applies ith respect to any other automobile, subject to the following pro-isions:

a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured and spouse, and (2) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III does not apply to this insurance.

b) Under division 1 of coverage C, this insurance applies only if the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by a private chauffeur or domestic servant of such named insured or spouse, or from the occupancy of said automobile by such named insured or spouse.

(c) This insuring agreement does not apply:

(1) to any automobile owned by or furnished for regular use to either the named insured or a member of the same household other than a private chauffeur or domestic servant of such named insured or spouse;

(2) to any accident arising out of the operation of an automobile sales agency, repair shop, service station, storage garage or public parking place;

(3) to any automobile while used in a business or occupation of such named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, private chauffeur or domestic servant.

VI. Policy Period, Territory, Purposes of Use: This policy applies only to accidents which occur during the policy period, while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof and, if a "described automobile" under Insuring Agreement IV, is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

This policy does not apply:

(a) except under division 2 of coverage C, while the automobile s used as a public or livery conveyance, unless such use is specifically declared and described in this policy;

(b) under coverages A and B, to liability assumed by the insured nder any contract or agreement;

(c) under coverages A and B, while the automobile is used for the owing of any trailer owned or hired by the insured and not covered by ike insurance in the company; or while any trailer covered by this policy s used with any automobile owned or hired by the insured and not overed by like insurance in the company;

(d) under coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(e) under coverage A, to any obligation for which the insured or ny carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or nder any similar law;

(f) under coverage B, to injury to or destruction of property owned or transported by the insured, or property rented to or in charge of the insured other than a residence or private garage injured or destroyed by a private passenger automobile covered by this policy;

(g) under division 1 of coverage C, to bodily injury to or sickness, disease or death of any employee of the named insured or spouse arising out of and in the course of (1) domestic employment by the named insured or spouse, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the named insured or spouse;

(h) under coverage C, to bodily injury to or sickness, disease or death of any person who is an employee of an automobile sales agency, repair shop, service station, storage garage or public parking place, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(i) under division 2 of coverage C, to bodily injury to or sickness, disease or death of an insured sustained while in or upon or while entering into or alighting from an automobile owned by any insured;

(j) to injury, sickness, disease or death due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, with respect to expenses under Insuring Agreement II(b)(3) or under coverage C.

CONDITIONS

1. Limits of Liability—Coverage A: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

2. Limit of Liability—Coverage B: The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

3. Limit of Liability—Coverage C: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person, including each insured, who sustains bodily injury, sickness, disease or death as the result of any one accident.

4. Severability of Interests—Coverages A and B: The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

5. Financial Responsibility Laws—Coverages A and B: When this policy is certified as proof of financial responsibility for the future under the provisions of the motor vehicle financial responsibility law of any state or province, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

6. Assault and Battery—Coverages A and B: Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

7. Notice of Accident: When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

8. Notice of Claim or Suit—Coverages A and B: If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

9. Assistance and Cooperation of the Insured—Coverages A and B: The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

10. Medical Reports; Proof and Payment of Claim—Coverage C: As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

11. Action Against Company—Coverages A and B: No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

12. Action Against Company—Coverage C: No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.

13. Other Insurance—Coverages A and B: If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance.

14. Other Insurance—Coverage C: Under division 1 of coverage C, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible automobile medical payments insurance.

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

15. Subrogation—Coverages A and B: In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

16. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

17. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover (1) the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insureds, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under division 1 of coverage C while the automobile is used by such person, until the appointment and qualification of such legal representative; provided that notice of cancelation addressed to the insured named in item 1 of the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

18. Cancelation: This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

19. Declarations: By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the declarations page by a duly authorized representative of the company.

Secretary

Presiden

excess liability policy

5/171

reserve insurance company

A Stock Company
CHICAGO, ILLINOIS

Renewal of
XEL 004896

DECLARATIONS This policy insures:

Item 1. Named Insured, Address and Zip Code

Aaacon Auto Transport, Inc.
146 West 42nd Street
New York City, New York 10036

Producer No. 5-90055

Producer's Name, Address and Zip Code

Seaboard Underwriters
P. O. Box 659
Burlington, North Carolina

2. Occupation: Drive-away contractor

Name and address of employer

Policy Period: 12:01 A.M., STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED AS STATED HEREIN.

From: 11-11-71 To: 11-11-72 Term: 1 year

No. of Previous accidents:

FOR COMPANY USE ONLY 1003

01	762	055	230	1		1

Location of Coverage: and as further defined in the Primary Policy Same

3. Primary Insurance: (1) Insurer, (2) Policy number (including renewals/or replacements thereof)

(1) Home Insurance Company
(2) APR 32-33-05

4. Description of Coverage: Excess Automobile Liability

5. The insurance afforded is only with respect to such of the following coverages as are indicated by specific premium charge or charges. The limit the Company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

Coverages	Premium	SECTION I Company Limits	IN EXCESS OF	SECTION II Underlying Limits	SECTION Total Lim
A. Bodily Injury—Auto	$ 14,400.00	$ 225,000.	Each Person	$ 25,000.	$ 250,0
	$	$ 400,000.	Each Accident or Occurrence	$ 100,000.	$ 500,0
Bodily Injury—Other	$	$	Each Person	$	$
	$	$	Each Accident or Occurrence	$	$
	$	$	Aggregate Products	$	$
B. Property Damage Automobile	$ Included	$ 90,000.	Each Accident or Occurrence	$ 10,000.	$ 100,0
C. Property Damage	$	$	Each Accident or Occurrence	$	$
Except Automobile	$	$	Aggregate Operations	$	$
	$	$	Aggregate Protective	$	$
	$	$	Aggregate Products	$	$
	$	$	Aggregate Contractual	$	$
D. Combined Single Limit Bodily	$	$	Each Accident or Occurrence	$	$
Injury and/or Property Damage	$	$	Aggregate	$	$
E. Other	$				
	$				
	$				
Total	$ 14,400.00				

6. Premium Computation

Premium Basis	Estimated Exposure	Rate	Premium
Percentage of Primary Premium	$36,000.00	40%	$14,400.00

Deposit Premium $ 3600.00 Minimum Premium $ 11,520.00 Audit Period Monthly

Date of Issue 11-29-71 mmw Countersigned by

Licensed Resident Agent or Authorized Representative

1859

R10 U79 (6-68)

EXCESS THIRD PARTY LIABILITY POLICY

CNA/insurance 4/17

INSURANCE IS PROVIDED BY THE COMPANY DESIGNATED BELOW
(A stock insurance company, herein called the company)
Continental Center 310 S. Michigan Ave. Chicago, Ill. 60604

☒ CONTINENTAL CASUALTY COMPANY
☐ NATIONAL FIRE INSURANCE COMPANY of
☐ AMERICAN CASUALTY COMPANY of Read
☐ TRANSPORTATION INSURANCE COMPANY
☐ TRANSCONTINENTAL INSURANCE COMP
☐ VALLEY FORGE INSURANCE COMPANY

INTERSTATE MOTOR
CARRIERS AGENCY
INSURANCE
280 BROADWAY NEW YORK 7 N
Phone BEekman 3-[illegible]

DECLARATIONS

Item	PRODUCER NO.	BRANCH	PREFIX	POLICY NUMBER
1	034250	380	RDX	889-17-65

NAMED INSURED & ADDRESS: (Number & Street, Town, County & State)

Aaacon Auto Transport, Inc.
147 W. 42nd St.
New York, New York

2. Policy Period: (hereinafter called "this policy period") 11-11-71 To: 11-11-72 12:01 A.M., STANDARD TIME AT THE ADDRESS OF THE INSURED AS STATED HEREIN.

3. Schedule of Underlying Insurance: Insurer and Policy Number

Reserve Insurance Co. (# to be advised)

4. Limits of Liability: The limit of the Company's liability shall be as stated herein, subject to all the terms of this policy having reference thereto.

COLUMN I		IN EXCESS OF COLUMN II	COLUMN III	
Company Limits		Underlying Limits	Total Limits	Coverage
$	Each Person	$ 250,000.	$	A. Bodily Injury
$	Each Occurrence	$ 500,000.	$	Automobile
$	Each Person	$	$	B. Bodily Injury
$ See End't	Each Occurrence	$	$	Except Automobile
$ No. 1	Aggregate	$	$	
$	Each Occurrence	$ 100,000.	$	C. Property Damage Automobile
$	Each Occurrence	$	$	D. Property Damage
$	Aggregate	$	$	Except Automobile
$	Each Occurrence	$	$ 1,000,000.	E. Combined Single Limit Bodily
$	Aggregate	$	$	Injury and Property Damage
				F. Other

5. Premium Computation

Premium Basis	Estimated Exposure	Rate	Estimated Prem
Percent of Underlying Premium	$67,620	11%	7,440.

Deposit Premium: $ 3,720. on effective date of policy
$
$

Minimum Premium: $ 5,700.
$

Audit Period Quarterly

Countersigned
Licensed Resident Agent
Seaboard Underwriter

G-4 219 A

mk;lh

APPENDIX 1860

5/1 73

Memorandum of Insurance

EFFECTED THROUGH

PARKE STETHEM LIMITED

INTERSTATE MOTOR
CARRIERS AGENCY
INSURANCE
280 BROADWAY NEW YORK 7 N.Y.
Phone BEekman 3-6600

No. S 7025

(Renewing S-6456)

Premium (54.98%) $5,498.

Stamp

$5,498.

Rate Payable 1/3 Annua

Assured AAACON AUTO TRANSPORT INC.

Address NEW YORK, N.Y.

In accordance with your instructions we have effected insurance as follows:

Period 36 Months at 6th May, 1971, 12.01 A. M.

Sum Insured or Limit of Indemnity As per Schedule of Limits attached. $3,000,000

Particulars of Insurance EXCESS COMPREHENSIVE AUTO BODILY INJURY AS PRIMARY

INTEREST: Legal Liability in respect of Assured's operations, as more fully defined in the Primary policy of HOME INDEMNITY CO.

SITUATION: U. S. A. and/or Canada

SUBJECT TO: Lloyd's Policy to be issued - Form T.P.1A./NMA.1567, NMA.1256.
30 day Cancellation Clause.
Annual check of cars and underlying terms.
Premium payable one third annually.

Premiums and Losses payable in U. S. Currency.

Insured with **Underwriters at Lloyd's London** - 54.98%

Signed at Montreal, P.Q. this 7th day of June, 1971

APPENDIX 1861

PARKE STETHEM LIMITED

Per:

SUBJECT TO ALL TERMS AND CONDITIONS OF THE POLICY TO BE ISSUED, WHICH, WHEN DELIVERED, REPLACES THIS MEMORANDUM.

E. & O. E.

Immediate notice must be given to Parke Stethem Limited by you if any changes are required in the above particulars of the insur
or of any occurrence which may result in a loss covered by the insurance.

1M-8-56-156300 C. & R.

4174

Interstate Commerce Commission
Bureau of Operations
26 Federal Plaza
New York, N.Y. 10007

February 18, 1970

AAACON Auto Transport, Inc.
147 West 42nd Street
New York, New York 10036

Re: Hortense Whitney
vs AAACON Auto Transport, Inc.

Gentlemen:

I have received a letter from Louis Jacobs, Esq., 85 Devonshire St., Boston, Mass., who represents Hortense Whitney. Mr. Jacobs is under the impression that there is a deductible clause in your insurance policy on file with the Commission.

Under the authority of Section 215 of the Interstate Commerce Act, the Commission has prescribed rules and regulations on the Part 1043, 49 CFR to be followed and establishes security for the protection of the public in the form of insurance, a surety bond or qualification as a self insurer.

Under Section 1043.2(b), 49 CFR carriers must obtain the minimum amounts specified below. Limit for bodily injuries to all or death of all persons injured or killed in any one accident (subject to a maximum of $25,000 for bodily injuries or to death of one person) with a total catastrophe limit of liability of $100,000.

Limit for loss or damage in any one accident to property of others, excluding cargo, $10,000.

The limits in regard to cargo insurance, as set forth in the Commission's order dated July 23, 1968, in Ex parte MC No. 5, and Ex parte No. 159, the limits for cargo loss on one particular shipment must be $2,500. with a total catastrophe loss of $5,000.

These insurance filings with the Commission have no deductible clause.

It is hoped that this information may be of assistance to you.

Yours very truly,

Stephen P. Tomany
District Supervisor

cc: Louis Jacobs, Esq.
85 Devonshire Street
Boston, Massachusetts 02109

$175

Deposit	Balance Due	Balance Due Date	Car Owner	Dispatch Date
Bill of Lading #	REMARKS			Dispatched By

APPLICATION TO RESERVE AUTOMOBILE WITHOUT CHARGE

Name		Present or Future Employer-Name	
Street Address in This City		Street Address	
City & State	Tel.	City & State	Tel.
Permanent Name & Address		Business Reference Name	
Street Address		Street Address	
City & State	Tel.	City & State	Tel.
Relative's Name		Driver's Destination - Who Do You Intend to Stay with-Name	
Street Address		Street Address	
City & State	Tel.	City & State	Tel.
Relative's Name		In Case Of Emergency Notify the Following-Name-	
Street Address		Street Address	
City & State	Tel.	City & State	Tel.

Driver's License #		Height	Weight	Hair Color	Social Security #
State Issued	Expiration Date	Eyes Color	Age	Married?	Did You Ever Drive A Car From Any Of Our Offices Before?

I expect to leave no later than -- Date	Do you have a medical card	Do you have a passport or Dept. of Justice Card #

The reason for making this trip is	How did you hear about us	Newspaper ☐	Yellow Pages ☐	Friend ☐	Other Source ☐

READ CAREFULLY

I, the undersigned, having passed my twenty-first birthday, do hereby apply to Aaacon Auto Transport, Inc. (Aaacon) to make available to me an automobile to enable me to reach my destination. Aaacon has provided me with a choice of vehicles for this purpose under a bill of lading which I shall sign along with the car owner. I specifically agree to the following conditions to induce Aaacon to arrange to make available an automobile for my use without charge: (1) To comply with all traffic regulations and to surrender the above-mentioned vehicle to the consignee on the Bill of Lading no later than 6:00 P.M. of the due date indicated on the bill of lading; (2) To notify the car owner in the event of an accident or major repair; (3) To provide my own gas, oil and tolls while in transit; (4) To provide an I.C.C. medical card; (5) To provide necessary repairs to the vehicle which shall be reimbursed by the car owner, and to obtain the permission of the car owner before making repairs in excess of $20.00 or to waive my right to reimbursement from the car owner for such repair; (6) To carry no narcotics, liquor, firearms or other illegal items; (7) Inasmuch as I am using the car for my own transportation needs, to transport no paying passengers or hitchhikers and to allow no one to ride in the assigned vehicle except such person or persons who I have caused to sign this application; (8) To surrender the car to its owner washed at my own expense (weather permitting), but under all circumstances clean inside; (9) To use a route, at my own discretion, which shall be reasonably direct between my point of departure and my point of destination; (10) To forfeit my bond deposit in the event of any accident or damage to the assigned vehicle; (11) To pay all fees required by state law and be responsible for all traffic violations while car is en route; (12) Not to use the assigned vehicle for towing or trucking purposes or any purpose other than my personal transportation. (13) Not to allow anyone to drive the assigned car.

I agree that I am an independent contractor seeking transportation; that I am in no way the agent, servant or employee of Aaacon; that I hereby waive any and all claims of any nature whatsoever against Aaacon or the car owner arising out of this agreement or driving or riding in the assigned vehicle; that in the event that I fail to use a reasonably direct route or delay in the surrender of this vehicle beyond the date by which I agree to surrender it as noted on the bill of lading I will be liable for damages including, but not limited to, the rental value of the vehicle; that I understand that Aaacon is in no way responsible for the condition of this vehicle or any repairs made thereto, and that I will satisfy myself with respect to the condition thereof prior to my departure. I have received, read and understood a copy of pertinent I.C.C. regulations, and I will, for my own safety inspect the vehicle and complete the condition report on the Bill of Lading, which shall be signed by the consignee at destination and returned to Aaacon to obtain return of my deposit from the consignee.

APPENDIX 1863

Bond Deposit

Full payment at destination

Signed

Driver-Date

RELEASE WAIVER BY PASSENGERS—In consideration of permission granted to me, the undersigned, to ride in the above mentioned vehicle I do hereby, for myself, my heirs, administrators now and forever agree to hold carrier and car owner harmless and to waive any and all claims of any kind or description against the carrier or car owner and to assume all liabilities for any minor who may accompany me. I will not drive the vehicle.

Signed Address Tel.

Signed Address Tel.

8/71

I, ______________________________, understand and agree that if I permit persons to accompany me who have not signed the front of this application, or if I pick up hitchhikers, that I have violated Federal Law and that I shall be personally and individually liable for any bodily injuries or property damage sustained by said persons under the applicable law.

____

INTERVIEWER REMARKS AT SIGNOUT

ATTACH MEDICAL CARD BELOW

ATTACH PHOTOS BELOW IN SPACE

THUMBPRINTS

LEFT THUMB

RIGHT THUMB

APPENDIX 1864

4176

UNITED STATES FIDELITY AND GUARANTY COMPANY

Baltimore, Maryland

NAME OF INSURED, STREET, CITY, STATE

AAACON AUTO TRANSPORT INC.
147 W. 42nd STREET
NEW YORK, NEW YORK

COMMERCIAL BLANKET BOND

Edition of May, 1957

BOND No. 53 0060 185 72

UNITED STATES FIDELITY AND GUARANTY COMPANY

BALTIMORE, MARYLAND

(A Stock Company herein called the Underwriter)

COMMERCIAL BLANKET BOND

—DECLARATIONS—

ITEM 1. Name of Insured: AAACON AUTO TRANSPORT INC.
147 W. 42nd STREET
NEW YORK, NEW YORK (herein called the Insured)

Principal Address: (NO., STREET, CITY, STATE)

ITEM 2. Bond Period: from noon on MARCH 1st, 1972 (MONTH, DAY, YEAR) to noon on the effective date of the cancelation or termination of this Bond, standard time at the Principal Address as to each of said dates.

ITEM 3. Limit of Liability: $ 25,000.00

ITEM 4. The liability of the Underwriter is subject to the terms of the following riders attached hereto:
END MO 1141

ITEM 5. The Insured by the acceptance of this Bond gives notice to the Underwriter terminating or canceling prior bond(s) or policy(ies) No.(s)
NONE
such termination or cancelation to be effective as of the time this Bond becomes effective.

John D. Williams
SECRETARY

PRESIDENT

Countersigned by Andrew J. Gettings
Authorized Representative

APPENDIX 1865

E/177

Interstate Commerce Commission
BUREAU OF OPERATIONS
Washington, D.C. 20423

February 7, 1972
IN REPLY REFER TO: K-LJS

Mr. Ralph Zola
AAA Con Auto Transport, Inc.
147 West 42nd Street
New York, NY 10036

Dear Mr. Zola:

Enclosed is a self-explanatory copy of a letter I sent to an insurance company regarding the bodily injury and property damage liability insurance for driveaway operators. I hope it will be of some assistance to you. If further specific questions remain, do not hesitate to request our aid.

Very truly yours,

L. J. Schloer, Chief
Section of Insurance

Enclosure

APPENDIX 1866

April 1, 1968

K-LJB

Mr. J. J. Mallon, President
Midwest Mutual Insurance Company
Seventh and Walnut Streets
Des Moines, Iowa 50309

Dear Mr. Mallon:

Your letter of March 26 has raised an interesting question, any answer to which must be in the form of my informal opinion subject to a final determination by a court of competent jurisdiction.

In my opinion, our insurance requirements have been established primarily to furnish the public with prescribed minimum protection. Any provision in the policy you furnish the driveaway motor carrier, which would make it excess insurance over any insurance in force at the time, would not violate our insurance rules and regulations.

I have made a spot check with several private passenger insurers which agree unanimously that their coverage to the owner of the vehicle is intended to be primary. This certainly reinforces your position.

It must be understood, however, that under the terms of our prescribed endorsement form, BMC 90, your company is responsible for the payment of any judgment recovered against the driveaway carrier. While you may have a right of subrogation against the owner's insurance, no delay can be incurred in the settlement of the outstanding judgment against your insured.

It is suggested that your insured contact this Commission's Section of Tariffs headed by Mr. Edward Grosvenor to fully explore the acceptability of tariff revisions to incorporate the situation where the owner has adequate BI&PD insurance. It probably would be best to ask that Section to consider the publication of an allowance for the owner maintaining adequate insurance coverage.

I assume it is clearly understood that such shifting of responsibility cannot be accomplished as respects the cargo being transported, in this case, the automobile. The Interstate Commerce Act, Section 20 (11), specifically provides that the common carrier must be fully liable for any loss or damage to the cargo being transported.

BEST COPY AVAILABLE

APPENDIX 1867

I trust this fully answers your inquiry, but if further questions remain, please be assured of my cooperation.

Very truly yours,

L. J. Schleer, Chief
Section of Insurance

LJS/bmw

4119

AAACON AUTO TRANSPORT CORPORATE POLICY MANUAL	PAGE NO 1 of 1	POLICY NO D-001
	EFFECTIVE DATE 12/30/70	REVISION NO ***
SUBJECT Repairs and accidents	APPROVED R. N. Keys	

The driver should be told in the strongest possible language that if a repair has tobe made the driver should contact the owner in the event the repair is over $20.00 The owner will then give the driver permission and will reimburse the driver upon delivery. If the repair is under $20.00, the driver should have the repair made, obtain a receipt, and present this to the owner at destination for reimbursement.

Whenever a repair is made, if a part is replace the old part should be kept and presented to the owner at destination, if at all possible.

In the event that the driver is involved in a minor accident, have him deliver the automobile damaged to the owner. In the event of any accident, you should have the owner notified immediately. It is suggested that the owner notify his insurance company because of the possiblity of third party claims that may be later presented against him. You should inform the owner that you are notifying the claims department in New York and that they will notify our insurance company immediately. If the question arises, you may inform the owner that our insurance is primarily responsible for all cargo claims for which our company is liable.

HOWEVER, IN NO EVENT SHOULD YOUR OFFICE EVER MAKE A SETTLEMENT COMMITMENT TO THE OWNER. YOUR OFFICE SHOULD NEVER AUTHORIZE REPAIR OF VEHICLES. ONLY THE CLAIMS DEPARTMENT IN NEW YORK IS AUTHORZIED TO DO SO.

AAACON AUTO TRANSPORT, INC.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

5/163

Dear Customer:

We have received your correspondence concerning the transportation of your car.

Please be assured that it will be processed as soon as we are able to make an investigation and receive the necessary documents.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Claims Department

RJZ:mg

APPENDIX 1870

5/185

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

Interstate Motor Carriers Agency
280 Broadway
New York, New York 10007

Refer to our Claim # ________

Gentlemen:

We are enclosing the attached documents to fulfill the notice provision of our insurance policy.

Registered Owner:

Our Bill of Lading No.

These are a first submission ( )

These are further to our mailing of:

Very truly yours,

Claims Department

Documents enclosed:

( ) Original Freight Bill

( ) Bill of Lading

( ) Accident Report

( ) Damage Estimate (s)

( ) Other: ______________________________

____

____

418

AAACON AUTO TRANSPORT INC.

NEW YORK · LO 3-2222 147 West 42nd St.
CHICAGO · HA 7-0986 202 South State St.
DETROIT · 963-2111 1249 Griswold
HOUSTON · CA 7-3146 517 La Branch St.
ST. LOUIS · CE 1-7035 511 Locust St.
PHOENIX · 264-0201 222 West Osborn Rd.
BOSTON · KE 6-0120 250 Boylston St.
CLEVELAND · 781-6263 1148 Euclid Ave.
MINNEAPOLIS · 336-8666 727 Hennepin Ave.

NEW YORK
147 WEST 42 ST.
LO 3-2222

ICC # MC 125808

LOS ANGELES · MA 4-6644 707 S. Broadway
ATLANTA · 523-7644 175 Peachtree N.E.
SAN DIEGO · 234-6511 235 Broadway
SAN FRANCISCO · 431-0664 1095 Market St.
NEW ORLEANS · 525-0257 921 Canal St.
DALLAS · RI 2-4271 912 Commerce St.
WASHINGTON, D.C. · 298-8336 1025 Vermont
SEATTLE · MU 2-2277 1904 3rd Ave.
MIAMI · FR 1-4766 10 N.E. 3rd Ave.

BONDED and INSURED INTERSTATE AUTOMOBILE TRANSPORTERS • LICENSED BY THE INTERSTATE COMMERCE COMMISSION-NUMBER MC 125808

Gentlemen;

We understand that the above captioned accident was in fact investigated by your Police Department. Enclosed is our self- addressed envelope together with our draft in the amount $2.00 which we assume will cover the fee.

Car #1; Driver:..
Owner: ....

Car #2: Driver:..
Owner: ....

Accident Date: ....

Accident Location:..

Thanking you for your promptness and courtesy in this matter, I am,

Very truly yours,

By:

Claims Department

APPENDIX 1872

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3/208

TIME, DECEMBER 13, 1971

AUTOS

The Largest Recall

Skimming through the voluminous stacks of mail that reach him in Washington, Ralph Nader last summer began picking up an unusual pattern of complaints about some products made by his old antagonist, G.M.'s Chevrolet Motor Division. Scores of engines on Chevies made from 1965 to 1969, the letters indicated, were twisting loose from car frames, sometimes with the frightening result that the auto's accelerator pedal was pulled all the way down to the floor and the brakes failed. At roughly the same time, the National Highway Traffic Safety Administration was looking into similar complaints. Last week that combined scrutiny led G.M. to announce the largest auto recall ever: in the next few months, its dealers will make repairs on the engine mounts of nearly 6.7 million cars and light trucks.

The problem is that on many cars equipped with V-8 engines during that period, a rubberized layer between two pieces of metal on the mounts has deteriorated, loosening the entire assembly. G.M. engineers recognized the trouble more than two years ago and designed a replacement part with a T-shaped metal bar that prevents any slipping, even if the rubber has worn away. But only a few Chevy owners notified under the recall will actually get that part, which costs $30. Unless the design of the engine will not permit it, the rest will have to settle for bracelike "restraints" that will reportedly cost G.M. about $5 each, including installation.

G.M. officials maintained that the rubber section "obviously cannot be expected to have the life of the metal parts that it connects." Thus, they said, engine mounts should be regarded as items, like fan belts, that must be regularly checked and serviced when necessary—although they rarely are on most cars. Yet the company apparently did not want to test that claim in court. Federal officials last week were preparing to issue a formal notification of defect. By announcing the recall, G.M. clearly hopes to avoid any legal entanglement resulting from problems with the engine mounts.

APPENDIX 1873

4/222 35209

Printed on NCR Paper Printed in U.S.A.

POLICY NUMBER: AFC 2525603

AGENCY AT Miami CITY

Florida STATE

AUTOMOBILE

SWORN STATEMENT IN PROOF OF LOSS

AMOUNT OF POLICY $ 50 Ded

INCEPTION DATE 11-6-68

EXPIRATION DATE 11-6-69

American Home Assurance Co.
(NAME OF INS. CO.)

BY YOUR POLICY OF INSURANCE ABOVE DESCRIBED, YOU INSURED Lee Martell (HEREINAFTER CALLED THE INSURED) ACCORDING TO THE TERMS AND CONDITIONS CONTAINED THEREIN AGAINST LOSS OCCASIONED BY Collision ON AUTOMOBILE DESCRIBED AS FOLLOWS —

MODEL YEAR	TRADE NAME	TYPE OF BODY (IF TRUCK, STATE TONNAGE)	SERIAL NUMBER	MOTOR NUMBER
1966	Cadillac	Fleetwood	P6126863	

TIME AND ORIGIN: A LOSS TO THIS VEHICLE CAUSED BY Collision OCCURRED ON THE — DAY OF — , 19— ABOUT THE HOUR OF O'CLOCK, — M., THE FULL PARTICULARS OF WHICH ARE AS FOLLOWS:

Accident occurred sometime between 10-24-69 and 12-2-69 and somewhere between New York and Miami, Florida.

(STATE WHERE AND HOW IT OCCURRED)

TITLE AND INTEREST: THE SAID AUTOMOBILE AT THE TIME OF THE LOSS OR DAMAGE BELONGED SOLELY TO Lee Martell AND NO OTHER PERSON HAD ANY INTEREST THEREIN, BY CHATTEL MORTGAGE, SALE CONTRACT, OR OTHERWISE, EXCEPT AS FOLLOWS: No exception

TOTAL INSURANCE: AT TIME OF THIS LOSS THERE WAS NO OTHER INSURANCE ON SAID AUTOMOBILE, EXCEPT AS FOLLOWS: No exception

AMOUNT OF LOSS & CLAIM: THE ACTUAL CASH VALUE OF THIS VEHICLE AND THE TOTAL INSURANCE THEREON AT THE TIME OF SAID LOSS; THE ACTUAL LOSS AND DAMAGE TO SAME BY SAID CASUALTY, AS SHOWN BY ANNEXED SCHEDULES, BILLS AND/OR ESTIMATES, THE AMOUNT OF INSURANCE EXTENDED BY THIS POLICY, AND THE AMOUNT CLAIMED UNDER THIS POLICY ARE AS FOLLOWS:

CASH VALUE (IF TOTAL LOSS)	TOTAL INSURANCE	WHOLE LOSS	AMOUNT NAMED IN THIS POLICY	AMOUNT CLAIMED UNDER THIS POLICY
A C.V.	Ded. $50.00	$302.22	Ded $50.00	$252.22 AND NO MORE

CERTIFICATE OF SATISFACTION & AUTHORIZATION TO PAY: THE LOSS OR DAMAGE FOR WHICH THIS CLAIM IS MADE HAS BEEN MADE GOOD TO MY ENTIRE SATISFACTION AND I HEREBY RELEASE AND DISCHARGE THE American Home Assurance Co. FROM ALL CLAIMS FOR LOSS OR DAMAGE RESULTING FROM THE ABOVE DESCRIBED ACCIDENT AND AUTHORIZE PAYMENT OF THE ABOVE DESCRIBED AMOUNT TO Lee Martell. WHOSE RECEIPT FOR SAME SHALL BE A COMPLETE ACQUITTANCE.

SUBROGATION: THE INSURED HEREBY COVENANTS THAT NO RELEASE HAS BEEN OR WILL BE GIVEN TO OR SETTLEMENT OR COMPROMISE MADE WITH ANY THIRD PARTY WHO MAY BE LIABLE IN DAMAGES TO THE INSURED, AND THE INSURED IN CONSIDERATION OF THE PAYMENT MADE UNDER THIS POLICY HEREBY ASSIGNS AND TRANSFERS TO THE SAID COMPANY TO THE EXTENT OF THE PAYMENT HEREIN MADE EACH AND ALL CLAIMS AND DEMANDS AGAINST ANY OTHER PARTY, PERSON, PERSONS, PARTNERSHIP OR CORPORATION, ARISING FROM OR CONNECTED WITH SUCH LOSS AND DAMAGE, AND THE SAID COMPANY IS HEREBY AUTHORIZED AND EMPOWERED TO SUE, COMPROMISE OR SETTLE IN MY NAME OR OTHERWISE TO THE EXTENT OF THE MONEY PAID AS AFORESAID.

STATEMENT OF INSURED: THE SAID LOSS WAS NOT CAUSED BY THE ACT, DESIGN OR PROCUREMENT ON THE PART OF THE INSURED, BY ANY ONE HAVING AN INTEREST IN THE VEHICLE OR [illegible] NOTHING HAS BEEN DONE BY OR WITH THE PRIVITY OR CONSENT OF THE INSURED [illegible] CONDITIONS OF THIS POLICY OR RENDER IT VOID; NO ARTICLES ARE MENTIONED HEREIN OR IN ANNEXED SCHEDULES, BILLS AND/OR ESTIMATES, OTHER THAN THOSE DAMAGED, DESTROYED OR STOLEN AND WHICH BELONGED [illegible] IN THE [illegible] OR CONTROL OF THE INSURED WHEN SAID LOSS OCCURRED; NO PROPERTY SAVED HAS BEEN CONCEALED IN ANY MANNER; NO ATTEMPT HAS BEEN MADE TO DECEIVE THE INSURER IN ANY MANNER AS TO THE CAUSE AND THE EXTENT OF SAID LOSS OR OTHERWISE.
ANY OTHER INFORMATION THAT MAY BE REQUIRED WILL BE FURNISHED ON CALL AND CONSIDERED A PART OF THESE PROOFS.
IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE FURNISHING OF THIS PROOF OF LOSS BLANK TO THE INSURED, OR ASSISTANCE IN MAKING UP THIS STATEMENT BY AN ADJUSTER OR ANY PERSON, OTHERWISE AGENT OF THE COMPANY IS AN ACT OF COURTESY AND IS NOT A WAIVER OF ANY RIGHTS OF [illegible].

WITNESS HAND AT N. Miami Beach, Fla. x Lee Martell

THIS 13th DAY OF February, 1970 BY

APPENDIX 187
TITLE

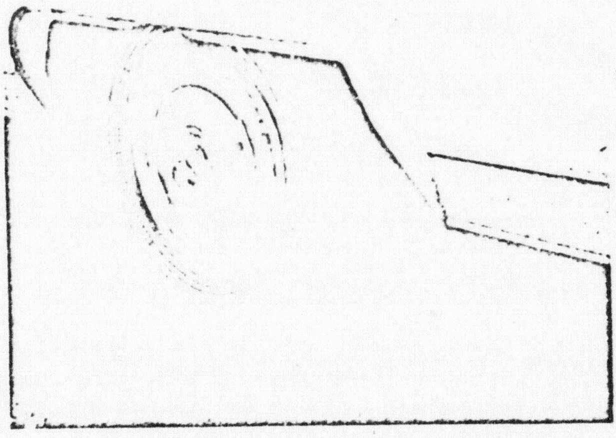
STATE OF Fla COUNTY OF Dade

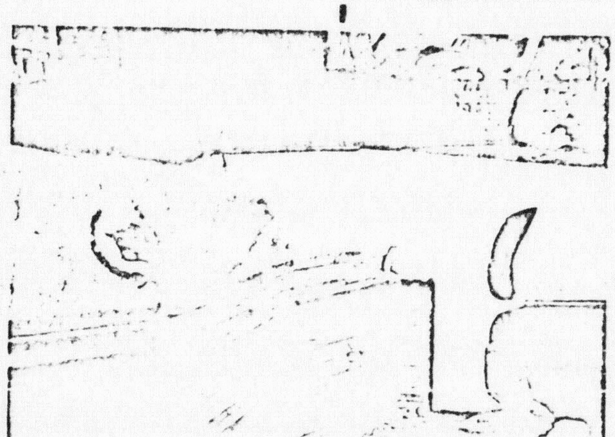
PERSONALLY APPEARED BEFORE ME THE DAY AND DATE ABOVE WRITTEN, Lee Martell SIGNER OF THE FOREGOING STATEMENT, WHO MADE SOLEMN OATH TO THE TRUTH OF SAME AND THAT NO MATERIAL FACT IS WITHHELD OF WHICH THE SAID INSURER SHOULD BE ADVISED.

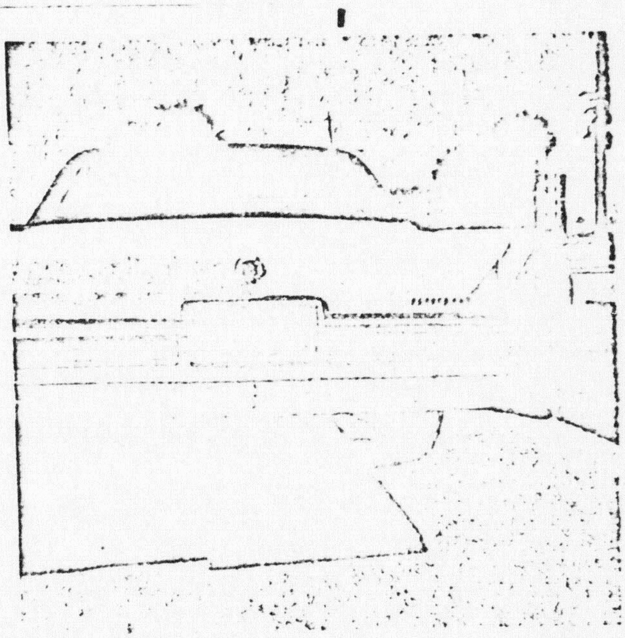
Rosemary Allen
NOTARY PUBLIC (SEAL)

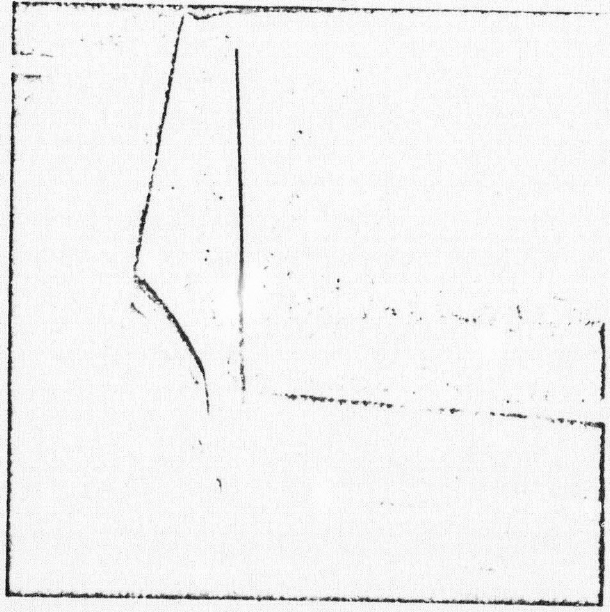
FORM NO. RF 176

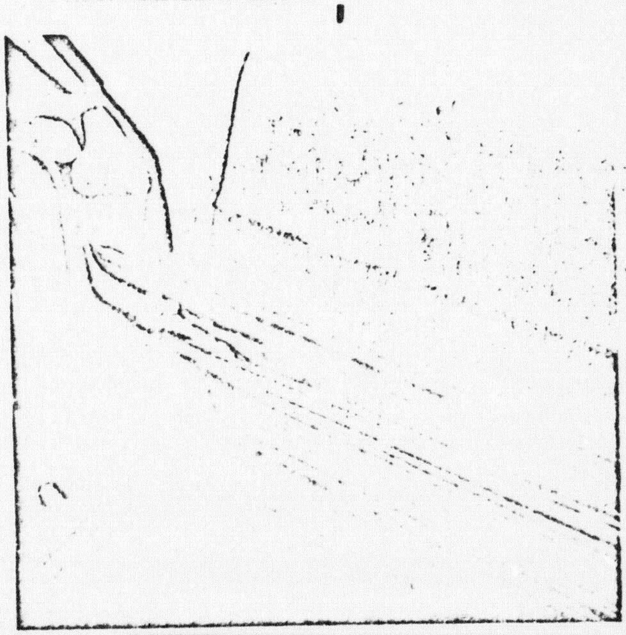
4223











APPENDIX 1875

4-229

August 15, 1969

Mr. Ralph Zola, Esq.
1472 Broadway
New York, New York 10036

Dear Mr. Zola:

This will confirm my telephone conversation with you on August 14, 1969, in which I advised you that licensed ICC motor cars have provided in their bills of lading arbitration clauses in the State of California, and on occasion these matters have been brought to arbitration before this Association. The clause varies slightly but basically follows the language of the "Standard Arbitration Clause" of the Association's Commercial Arbitration Rules, which is as follows:

> "Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof."

Should you have any other questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Robert D. Charlebois
Regional Manager

RDC/ovj

APPENDIX 1876

HEADQUARTERS
140 WEST 51ST STREET, NEW YORK, N.Y. 10020
REGIONAL OFFICES IN
BOSTON • CHARLOTTE • CHICAGO • CINCINNATI • CLEVELAND • DALLAS • DENVER • DETROIT • HARTFORD • LOS ANGELES • MIAMI • MILWAUKEE
NEW YORK • PHOENIX • PHILADELPHIA • PITTSBURGH • SAN DIEGO • SAN FRANCISCO • SEATTLE • SYRACUSE • WASHINGTON, D.C.

4230

APPENDIX 1877

american
arbitration
association

140 WEST 51st STREET • NEW YORK, N.Y. 10020
(AREA CODE 212) 582-6620

MICHAEL F. HOELLERING
MANAGER
NEW YORK REGION

September 23, 1968

Ralph J. Zola, Esq.
Zola and Zola
1472 Broadway
New York, New York 10036

Dear Mr. Zola:

In response to your inquiry, please be advised that the Interstate Commerce Commission licensed motor carriers have provided in their bills of lading for arbitration under the auspices of the American Arbitration Association.

Two typical examples of the clause of carriers are substantially as follows:

1) "Any claim or controversy arising out of or relating to this agreement, or the performance or breach thereof, shall be settled by arbitration in the City, County and State of New York in accordance with the laws of the State of New York and the Rules of the American Arbitration Association."

2) "Any controversy or claim arising out of or relating to this contract, the breach thereof, or the goods affected thereby, whether such claims be found in tort or contract shall be settled by arbitration law of the State of New York and under the rules of the American Arbitration Association, provided however, that upon any such arbitration the arbitrator or arbitrators may not vary or modify any of the foregoing provisions."

Very truly yours,

Michael F Hoellering
Michael F. Hoellering
Regional Manager

MFH:rg

HEADQUARTERS: 140 WEST 51st STREET, NEW YORK, N.Y. 10020
REGIONAL OFFICES IN: BOSTON • CHARLOTTE • CHICAGO • CINCINNATI • CLEVELAND • DALLAS • DENVER • DETROIT • HARTFORD • LOS ANGELES • MIAMI
MINNEAPOLIS • NEW YORK • PHILADELPHIA • PHOENIX • PITTSBURGH • SAN DIEGO • SAN FRANCISCO • SAN JUAN, P. R. • SEATTLE • SYRACUSE • WASHINGTON, D. C.

4246

October 7, 1970

Registered Mail - Return Receipt Requested

Acorn Auto Transport
1095 Market Street
San Francisco, California 415-431-066[illegible]

Attention: Mr. [illegible]

In re: Bill of Lading Agreement # [illegible]
[illegible] Slattery
[illegible]
Rocky River, Ohio

Dear Sir:

We understand that the 1970 Chevrolet [illegible] door Impala belonging to the above assured has been recovered in Lawrence, Kansas.

Our assured has filed a claim under his comprehensive coverage for total theft and we have no alternative but to pay Mr. Slattery for his automobile unless you can give us proof immediately that the said automobile is in your possession and the location of the automobile.

Our assured has been most patient with your company and we shall expect an immediate answer to this letter.

Very truly yours,

G. [illegible]
Claims Representative
American States Insurance Co.

[illegible]/sc
CC to Home Office

APPENDIX 1878

RECEIPT FOR CERTIFIED MAIL—30¢

No. 55062

SENT TO
Acorn Auto Transport
STREET AND NO.
1095 Market St.
P.O., STATE AND ZIP CODE
San Francisco, California

OPTIONAL SERVICES FOR ADDITIONAL FEES
Return Receipt
Shows to whom and date delivered ☐ 15¢ fee
Shows to whom, date, and where delivered ☐ 35¢ fee
Deliver to Addressee Only ☐ 50¢ fee

POSTMARK OR DATE
10-7-7

POD Form 3800 Mar. 1966
NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL
(See other side)

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

4-47

April 15, 1971

Mr. Jack E. Detmer
Claims Manager
American States Insurance Company
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Your Insured: Dorothy Slattery
Your File No: 769-953
Other Party: Aaacon Auto Transport
Driver: Hayden C. Jones
Accident of: 8-23-70
Location of: Between San Francisco & Ohio

Dear Mr. Detmer:

You wrote to us on March 26th, requesting payment of damage in the above-captioned matter, and on April 6th we wrote to you requesting proof of loss.

We have yet to receive same. Until we do so, we cannot complete the processing of this claim.

Very truly yours,

Bob Maxwell

Bob Maxwell

RJZ:el

4248

MANCON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

October 5, 1971

Mr. Jack E. Detmer
Claims Manager
American States Insurance Company
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Your Insured: Dorothy M. Slattery
Your File Nos: 769-053 & C-073-[illegible]

Dear Mr. Detmer:

I am in receipt of your letter of October 1st.

We note that your repair on the vehicle is for $750.00. However, our files indicate that the vehicle had considerable damage on it prior to the time our company received it, which said damage apparently was repaired in the course of the expenditure by your company of $750.00 and would seem to account for a substantial portion thereof. Furthermore, there is some question as to the cause of damage. Evidence would suggest the accident may have been caused by a faulty tire which we note was replaced.

In light of the foregoing, would you please advise us of the minimum amount that you would accept on this file.

Very truly yours,

Ralph J. Zola
Executive Vice President

RJZ:el

AANCON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10035 • (212) LO 3-2222

4249

October 4, 1971

Mr. Jack E. Detmer
Claims Manager
American States Ins. Co.
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Your Insured: Dorothy Slattery
Your File No: 769-053 and C-072-953
Loss Of: 8/23/70

Dear Mr. Detmer:

We are in receipt of your letter of October 1st, 1971.

It would appear that you have two claims. One claim is for contents and the other for damage to the vehicle. Inasmuch as your company authorized repairs, would you kindly inform us as to whether or not photos were made of the damage to the vehicle. If they are available, I would appreciate receiving copies of same.

Also, we cannot make out all of the items submitted by you on the proof of loss leading to the total of $829.83, please enumerate them.

Finally, note that the proof of loss includes repairs to the left rear fender which our Bill of Lading indicates was damaged. Therefore, we would appreciate receiving from you an estimate of the amount of the damage which does not include repairs for prior damage to the vehicle.

Upon receipt of this information, we will process your claim to a conclusion.

Yours truly,

Bob Maxwell
Claims Department

APPENDIX 1881

AAACON AUTO TRANSPORT, INC.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

4250

January 6, 1972

Mr. Jack E. Detmer
Claims Manager
American States Ins. Co.
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Your Insured: Dorothy
Slattery
Your File No: 769-053
and C-072-953
Loss Of: 8/23/70

Dear Mr. Detmer:

Enclosed is our letter of October 4th, 1971 to which we have not yet received a reply.

Would you kindly respond thereto.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice-President

RJZ:cs
Enclosure

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

February 17, 1972

Mr. Jack E. Detmer
Claims Manager
American States Insurance Company
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Dorothy M. Slattery
File Nos: 769-053 and
C-072-953

Dear Mr. Detmer:

Your letter of February 2nd was received by us today.

In order to complete the processing of your claim and to give you a definitive answer, it would be of help to us if you would forward to us the original photographs on the Slattery vehicle. This would enable us (1) to carefully evaluate the car, and (2) would in no way constitute a jeopardy to your position.

I assure you that we would carefully hold the photographs in escrow and return them to you at your request.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola

RJZ:mg

5/252

AMERICAN STATES INSURANCE

20713 CHAGRIN BOULEVARD • CLEVELAND, OHIO 44122 • PHONE (216) 295-1100

CLEVELAND, OHIO BRANCH

February 2nd, 1972

AAAcon Auto Transport
147 West Forty Second Street
New York, New York 10036

Attention: Mr. Ralph Zola

RE: Our Insured: Dorothy M. Slattery
File Nos: 769-053 and C-072-953
Loss of: 8-23-70

Dear Mr. Zola:

Pursuant to your letter of January 6th, 1972, I enclose the pertinent loss data relative to the above captioned files. The auto damage refers to file 769-953 and the personal articles theft to C-072-754.

The auto damage gross figure,which includes our insured's $100.00 deductible, is $929.83.

The theft loss was $169.50 of which our insured paid a $50.00 deductible.

Our insured is represented by Attorney William Nelson, Jr. of the firm of Squire, Sanders and Dempsey, 1800 Union Commerce Building, Cleveland, Ohio 44115.

We have retained the original documents relative to these losses if it becomes necessary to file suit against you through our California office, which state the contracts were completed. We also have additional data from our Kansas City and other related offices to support our claim if suit becomes necessary.

I am holding both the above files in abeyance for fifteen (15) days to enable you to review and reimburse us in these claims. Otherwise our only alternative would be to file suit within the most convenient and applicable court and I can assure you we will follow through in these matters.

APPENDIX 1884

AMERICAN STATES INSURANCE COMPANIES
AMERICAN STATES INSURANCE COMPANY / AMERICAN ECONOMY INSURANCE COMPANY / AMERICAN STATES LIFE INSURANCE COMPAN
AMERICAN STATES INSURANCE COMPANY OF TEXAS / PREFERRED FIRE INSURANCE COMPANY
EXECUTIVE OFFICES: 542 NORTH MERIDIAN STREET • INDIANAPOLIS, INDIANA 46206 • PHONE 639-2481

RE: Our Insured: Dorothy M. Slattery
Our File Nos: 769-053 and C-072-953

I assume to recive your response and reimbursement no later than February 18th, 1972. Review of both files indicates many delays in your accepting responsibility. We have been quite patient in these matters and have given you a great deal of time to equitably conclude these matters. If you decide to ignore or create further delay we will have no alternative other than institute legal action.

Awaiting your reply, I remain

Very truly yours,

Jack E. Detmer
JACK E. DETMER
Claims Manager
American States Insurance Company

JED/dcw

470 UUL1

PLEASE CHECK COMPANY ~~✓~~

☒ American States Insurance Company
☐ American Economy Insurance Company
☐ American States Insurance Company of Texas
☐

POLICY NUMBER X-34 110 037

AGENT & LOCATION Hopkinson - Burridge - Pearse

AUTOMOBILE PROOF OF LOSS

AMOUNT OF POLICY 100

POLICY TERM [illegible] 70 to 71

By your Policy of Insurance above described, you insured: Dorothy M Slattery

(Hereinafter called insured) according to the terms and conditions contained therein, including the written portion thereof and all endorsements, transfers and assignments attached thereto, on automobile described as follows:

	Trade Name	Type of Body (If truck state tonnage)	Model (Letter)	Model (Year)	Serial &/or Motor No.
DESCRIPTION OF AUTOMOBILE	Chevrolet	Impala Custom		70	134

COVERAGE Against loss and damage by: Collision

DATE OF LOSS A loss occurred on the 22 date of August 1970 about the hour of ______ o'clock ___ M.

CAUSE which loss upon the best knowledge and belief of Insured was caused by ______

LOCATION ______

OWNERSHIP When your policy was issued to the Insured, Insured was the sole and unconditional owner of the automobile described. No incumbrance of said property existed nor has since been made nor has there been any change in the title, use, location or possession of said automobile except; ______

OTHER INSURANCE At the time of loss, the Insured warrants that there was no other insurance covering the automobile for which claim is being made except; ______

VALUE THE ACTUAL CASH VALUE of above described automobile at the time of said loss was . . . $ ______

WHOLE LOSS THE ACTUAL LOSS AND DAMAGE to above described automobile as a result of said loss was . . $ 750.19

Tire allowance 30.00

720.19

AMOUNT CLAIMED INSURED HEREBY CLAIMS OF THIS COMPANY and will accept from this Company in full release 100.00

Deductible

and satisfaction in compromise settlement of all claims under this policy the sum of $ 620.19

Topeka Ok Out [illegible] 815.45

SUBROGATION The Insured hereby subrogates the said Company to all rights and causes of action the said Insured has against any person, persons or corporations whomsoever, for damages arising out of or incident to said loss or damage to said property. 14.38

829.83

ASSIGNMENT OF INTEREST Upon payment of claim for total loss by theft of automobile above described, the Insured does undertake to execute all instruments necessary to transfer, assign and set over unto the Insurer all rights, title, and interest in said automobile, and will help the said Insurer, or proper authorities, to identify said automobile, if found, and will render all assistance possible to recover the said automobile or to apprehend the thieves.

PAYMENT AUTHORIZATION I expressly authorize the payment of the consideration for this release to Ed Steinschke who repaired the damage.

STATEMENTS OF INSURED The said automobile has not been used for carrying passengers for compensation, or rented, or leased, or operated in any race or speed contest, nor for any illegal purpose, during the term of this policy.

The said loss did not originate by any act, design or procurement on the part of the Insured or this affiant; nothing has been done by or with the privity or consent of Insured or this affiant, to violate the conditions of this policy, or render it void; all articles mentioned herein belong to said automobile and were in possession of the Insured at the time of said loss; no property saved has been in any manner concealed; no attempt to deceive the said Insurer, as to the extent of said loss, has in any manner been made, and no material fact is withheld that the said Insurer should be advised of. Any other information that may be required will be furnished on demand and considered a part of this proof.

The claimant hereby declares that he is not a national of a foreign country, and is not by virtue of orders or regulations of the United States Government prohibited from accepting payment of within claim.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

X Dorothy M. Slattery (JB) Insured.

State of ______

County of ______

APPENDIX 1886

Subscribed and sworn to before me this ______ day of ______ 19__

______ Notary Public.

Form 323 (12-65)

Automobile Damage Inspection Report

☐ Atom
☐ Fast Track.
☒ Regular

Claim No. 769 953
Loss Date 8-23-70

☒ Collision
☐ Comprehensive
☐ Property Damage

SURED SLATTERY, Dorothy AGE 45 CLAIMANT

RIVER AGE RELATION TO INSURED

1970	Chevrolet	Impala Custom	164470U121390	EJ-965	15177
(Year)	(Make)	(Body Style)	(Identification Number)	(License Number)	(Mileage)

9-14-70	11-17-70	
(Date Contacted)	(Date Inspected)	(If No Inspection, Reason)

ESTIMATORS

Ed Stinson Olive $ 834.24
$
$

Estimate obtained by: ☑ Adj. ☐ Clmt. ☐ Insd. $

Repaired Before Reported ☐ Yes ☑ No

ODILY INJURY PAYMENT $

oss of Use Amount $

greed Price with No. 1 $ 750.19

ess Deductible $ 100.00 Tire allowance 30.00
Betterment $ 100.00

ayment To: ☑ Repairer ☐ Insd. ☐ Clmt. ☐ Mtgee. $ 680.19

mount Saved $ 84.05

abor Rate 9.00 $

arts Discount 10% Glass Discount %

eplacement Parts ☐ YES ☑ NO

umpers – ☑ New ☐ Used ☐ Rechrome

ld Damage – ☐ YES ☑ NO

HOTOS – ☑ YES ☐ NO
(Required on Total Losses)

ISK REPORT ☐ YES ☑ NO

UBROGATION REC. ☑ YES ☐ NO

UBROGATION PAY. ☐ YES ☐ NO

ame of Co. Paid $

educt Amount $

otal Subro. Payable $

ECIAL COMMENTS: front tires are worn out from miss alignment, Ins wants new tires, but I told Ins. to go after aaacon auto Trans.

1 tire was cut in accident

orm 3-19 (10/69)

TOTAL LOSS SECTION

CAR VALUATION

Book: (Edit. No.) (Page No.) (Model No.)

WHLSE. $ RETAIL $

Optional Equip. (Add or Subtract) $

Total Book Value $

Less 10% $

Average Market Value $

Agreed Value $

Less Ded. $

Payment To: ☐ Insd. ☐ Clmt. ☐ Mtgee. ☐ Other $

Less Salvage Sale Net $

Net Loss $

CAR CONDITION:	Above Avg.	Avg.	Below Avg.
Tires	☐	☐	☐
Interior	☐	☐	☐
Exterior	☐	☐	☐

OPTIONAL EQUIPMENT (Use For: PD. -COLL. -COMPRE.)

Trans. Kind AUTO $

Engine Kind V8 $

Power Brakes ☑ Disc Power Steering ☑ $

Air-Condition ☑ YES ☐ NO $

OTHER: Vinyl Roof $

SALVAGE SALE

Sold To:

Gross Amt. $

Less Chgs.: Pool $ Other $ $

Net Rec'd. and Submitted to H.O. $

Pool Stock No. No. Bids Rec'd

Salvage not put in pool because:

ADJUSTER Bob Vasek

BRANCH Cleveland

13.176

ED. STINN CHEVROLET, Inc.
21201 Center Ridge Rd. Telephone 331-3900
CLEVELAND, OHIO 44116

SHEET NO ____ OF ____ SHEETS

ESTIMATE OF REPAIRS

AMER STATES INS CO.

SLATTERY	ADDRESS 1150 HOMELAND D.	7/16/72.			
MAKE OF CAR CHEV IMP	YEAR 70	TYPE 2DR HT	LICENSE NUMBER ES965	MILEAGE	MOTOR NO RR. 1 / SERIAL NO
INSURED BY /	ADJUSTER	INSPECTOR	PHONE HOME / BUSINESS 333 7174		

DESCRIPTION OF REPAIRS AND REPLACEMENTS	PARTS NUMBER	PARTS AMOUNT	LABOR AMOUNT	PAINT AMOUNT	TOTAL AMOUNT
REPLACE FT BUMPER & STR BKT		46.05	2.0		
" " VALENCE PANEL.		15.50	0.5		
" " GRAVEL PAN		3.25	0.5		
" " UPPER & LOWER GRILLS		15.75 8.93	0.8		
" RT & LT FT H/LITE DOORS & ADJ.		10.90 10.90	0.9		
STR. FT CORE SUPPORT		–	1.5		
" " FENDER TIE BAR		–	0.5		
REPLACE LT FT HOOD HINGE.		5.50	0.5		
" FT HOOD MLD.		8.75	0.3		
" LT FT FENDER		77.10	3.0		
" " " W/O MLD & SIDE MLD..		8.50 7.25	–		
STR " " SKIRT		–	1.0		
" " " DOOR.		–	2.0		
" LT 1/4 PANEL		–	18.0		83.24
" " " W/ HOUSING		–	8.0		29.00
REPLACE " " W/O MLD & SIDE MLD.		6.30 14.50	–	paint	135.21 14.95
" REAR BUMPER		47.50	6.0		150.17
STR " DECK LID.		–	1.0		
FRAME DAMAGE — OPEN [illegible]				19.95	alignment
REFINISH CAR COMP.	11.0 hr	–	22.0	72.00	
			55.0		

The above is an estimate based on our inspection and does not cover any additional parts or labor which may be required after the work has been opened up. Occasionally after the work has started, worn or damaged parts are discovered which are not evident on the first inspection. Because of this the above prices are not guaranteed, and are for immediate acceptance only.

TOTAL	369.10	
LESS	28.91	LABOR 331.00
TOTAL ESTIMATE	340.19	TOTAL 671.34
NET	30.00	
DED	1303	

Automobile Damage Inspection Report

Atom
Fast Track
Regular

Claim No. 769-953
Loss Date 8-23-70

☐ Collision
☒ Comprehensive
☐ Property Damage

URED Slattery, Dorothy AGE ____ CLAIMANT ____

VER ____ AGE ____ RELATION TO INSURED ____

970 (Year) Chev (Make) 2dr Impala (Body Style) (Identification Number) EJ 965 (OHIO) (License Number) 14139 (Mileage)

(Date Contacted) 10/21/70 (Date Inspected) (If No Inspection, Reason)

ESTIMATORS

Bill Ireland $ 135.24
$
$

Estimate obtained by: ☐ Adj. ☐ Clmt. ☐ Insd. $

Repaired Before Reported ☐ Yes ☐ No

ODILY INJURY PAYMENT $

oss of se Amount $

greed Price ith No. $

ess Deductible Betterment $

ayment To: ☒ Repairer ☐ Insd. ☐ Clmt. ☐ Mtgee. $ 135.26

Amount Saved $

abor Rate $

arts Discount % Glass Discount %

Replacement Parts ☐ YES ☐ NO

Bumpers – ☐ New ☐ Used ☐ Rechrome

Old Damage – ☐ YES ☐ NO

PHOTOS – ☒ YES ☐ NO (Required on Total Losses)

RISK REPORT ☐ YES ☐ NO

SUBROGATION REC. ☐ YES ☐ NO

SUBROGATION PAY. ☐ YES ☐ NO

Name of Co. Paid $

Deduct Amount $

Total Subro. Payable $

PECIAL COMMENTS:

TOTAL LOSS SECTION

CAR VALUATION

Book: (Edit. No.) (Page No.) (Model No.)

WHLSE. $ ____ RETAIL $

Optional Equip. (Add or Subtract) $

Total Book Value $

Less 10% $

Average Market Value $

Agreed Value $

Less Ded. $

Payment To: ☐ Insd. ☐ Clmt. ☐ Mtgee. ☐ Other $

Less Salvage Sale Net $

Net Loss $

CAR CONDITION:	Above Avg.	Avg.	Below Avg.
Tires	☐	☒	☐
Interior	☐	☐	☐
Exterior	☐	☐	☐

OPTIONAL EQUIPMENT (Use For PD. -COLL. -COMPRE.)

Trans. Kind Auto $

Engine Kind V8 350 $

Power Brakes ☒ Power Steering ☒ $

Air Condition ☐ YES ☒ NO $

OTHER: $

SALVAGE SALE

Sold To:

Gross Amt. $

Less Chgs.: Pool $ ____ Other $ ____ $

Net Rec'd. and Submitted to H.O. $

Pool Stock No. ____ No. Bids Rec'd.

Salvage not put in pool because

APPENDIX 1889

ADJUSTER Rex Short

BRANCH Topeka, Kan

Form 3-19 (10/69)

(6)

Pursuant to our phone conversation of to-day I am enclosing bill for replacing wheel damaged as a result of 8-23-70 claim. You will note ~~claim is~~ bill is paid, check should be issued to assured. Thanks.

Libby
Hopkinson-Burridge-Pearse

STONE STORES #1581
21210 Center Ridge Rd. Phone: 333-0255
ROCKY RIVER, OHIO 44116

NAME J.J. Slattery DATE 12/18/70
(PRINT PLAINLY)
ADDRESS 1150 Homestead
Rocky River, Ohio
TERMS
CREDIT APPROVAL SOLD BY
DELIVER TO
ORDER NO.
VEHICLE-MAKE YEAR LICENSE NO.
MILEAGE PHONES-BUS. HOME 331-7154
TIME PROMISED Pick Up

QUAN.	FIRESTONE STOCK NO.	DESCRIPTION	OFFICE USE	UNIT EXC. TAX	PRICE	AMOUNT
1	190335	Wheel				9 62
1		Wheel Painted				2 62
1		Valve				1 50
						13 74
		Sales Tax				64
						14 38

No. 14-3

THANK YOU
ORIGINAL INVOICE
GIVE THIS COPY TO CUSTOMER IN ALL CASES

MDSE. VERIFIED & RELEASED BY
CHARGES ARE PAYABLE ON 10TH PROXIMO
CLAIMS AND RETURNED GOODS SHOULD BE ACCOMPANIED BY THIS TICKET
RECEIVED BY

CHARGE	CASH

FORM REV. ULLMAN BUSINESS FORMS CO., CLEVELAND, OHIO 44103

(7)

APPENDIX 1890

APPENDIX 1891

American States Ins. Co.

Shaffer

Ugo Hanekamp

RR

SOURCE 39

R.O. 33074[illegible]

LICENSE NO. E+565

DELIVERY DATE

TIME PROMISED A.M. P.M.

PHONE WHEN READY ☐ YES ☐ NO

WRITTEN BY

	OPERATION	
1	Lubrication	
2	Change Oil	
3	Change Oil Filter Cart.	
4	Align Front Wheels	
5	Balance Wheels	
6	Pack Front Wheel Bearings	
7	Pack U Joints	
8	Tune Up	
9	Safety Inspection	

	PART NO. OR DESCRIPTION			
1	3550704	[illegible]	50	20
1	3580[illegible]	[illegible]	9	25
1	385509[illegible]	[illegible]	18	90
1	3853[illegible]		16	50
1	3474176	[illegible]	6	40
1	3570637	[illegible]	75	50
	9700596	[illegible]	6	40
	3579516	w/o	9	95
	3576655	[illegible]	3	45
	3842476	[illegible]	52	75
	3977918	[illegible]	17	50
	3957[illegible]	[illegible]	5	25
	5502765	[illegible]	13	10
	3570214		9	80

77

P.O. NO.	SUBLET REPAIRS

TOTAL SUBLET REPAIRS

GAS-OIL-GREASE

REPAIR ORDER · LABOR INSTRUCTIONS

Repair as per est.

Align F.T. end. [illegible]
Check F.T. suspension.

$30 off $100 ded[illegible]
[illegible] tire allowance [illegible] deduct

WARRANTY CLAIMS | INTERNAL SALES | PARTS AND SERVICE SALES

	COST	KEY	ACCT. NO.	COST	SALE	KEY
LABOR MECH.		C				–
LABOR BODY SHOP		C			[illegible]	–
SUBLET REPAIRS		C	436			–
PARTS MECH.		C				–
PARTS BODY SHOP		C			[illegible]	–
		C				–
TIRES & TUBES		C	421			–
GAS, OIL, GREASE		C	490			–
PAINT MAT'L.		C	451		[illegible]	–
		C	430			–
		C	29			–
TAX			224		[illegible]	–
SOURCE 30 (0) CHARGE SALES						+
SOURCE 31 (0) CASH SALES			225		[illegible]	+

ED STINN CHEVROLET, INC.
21201 Center Ridge Road · Phone 331-1570
CLEVELAND, OHIO 4[illegible]

BILL-IRELAND CHEVROLET
"Home of K. C. Finest Service"
"DOWNTOWN"
16th & McGEE 816 HA 1-0000
KANSAS CITY, MISSOURI 64108

SERVICE
"Protects Your Car"
YEAR-ROUND

D 2[illegible]

JOB No.

NAME American [illegible] Co
ADDRESS 3400 Van Buren St [illegible] 128
CITY [illegible] PHONE 266-4735 [illegible]
DATE 10/28/70 SPEEDOMETER 14141 LICENSE NUMBER EJ965 (Okla)
MAKE 70 TYPE [illegible] SERIAL NUMBER
CODE NUMBER WRITTEN BY 301
ASSEMBLY CODE NO. SELLING DEALER DATE OF PURCHASE

OPR. NO.	DESCRIPTION	LABOR
	LUBRICATE	
	CHG. OIL FILTER	
	WASH	
	AIR CLEAN. C.C. SCREEN	
	FRONT WHL. BRGS.	
	ROTATE TIRES	
	REPACK U-JOINTS	
	CHANGE TRANS. DIF.	

REPAIR WORK DESCRIPTION

OPER. NO.		LABOR
	Inspect Engine and Call Ins. Co.	
	Replace Coil Wire	
32306	Get to Run	480
32903	Replace Battery	234

MATERIAL USED

QUAN.	PART NO.	DESCRIPTION	PRICE
1	2979565	[illegible]	155
1	R69	Battery	1595
			1750

TOTAL PARTS

TOTAL LABOR	714
TOTAL PARTS	1750
ACCESSORIES	65
TIRES & TUBES	
GAS, OIL & GREASE	3 gal — 105
OUTSIDE LABOR	10500
PAINT & MATERIAL	
SALES TAX	342
TOTAL AMOUNT	[illegible]

OTHER CHARGES

Tow + Storage	105.00
TOTAL OTHER	

THE ABOVE WORK HEREBY AUTHORIZED AND CONDITIONS AGREED TO AS OUTLINED BELOW. 14A - On auto [illegible]
SIGNED X [illegible]

TERMS are cash on delivery. ESTIMATES ARE FOR LABOR ONLY. MATERIAL IS EXTRA. Storage will be charged 48 hours after repairs are completed. Not responsible for loss or damage to cars or articles left in cars in case of fire, theft, accident or any other cause beyond our control. You and your employees may operate above vehicle for purposes of testing, inspection or delivery at my risk. An express mechanic's lien is acknowledged on above vehicle to secure the amount of repairs thereto. If above account is not paid when due and an attorney is employed to collect same, the undersigned will pay all reasonable attorney fees.

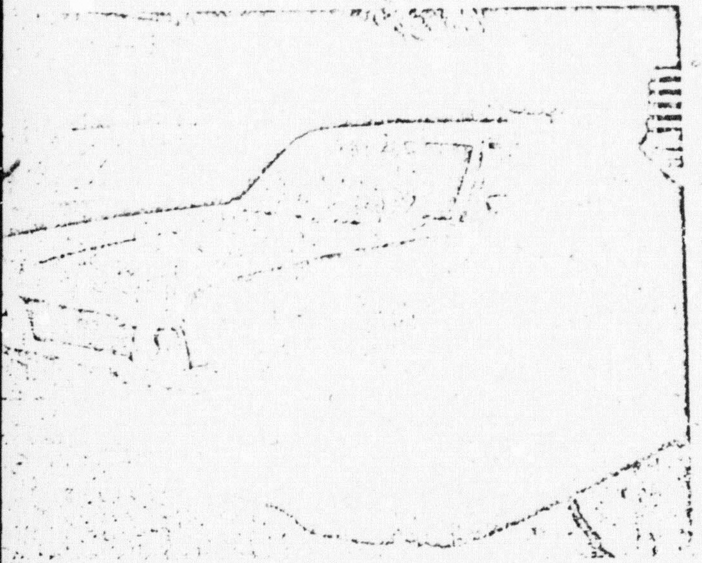
INTERNAL & [illegible]
CREDIT CODE
RECEIVED AM PM
PROMISED AM PM
CUST. ORDER
RECEIVED

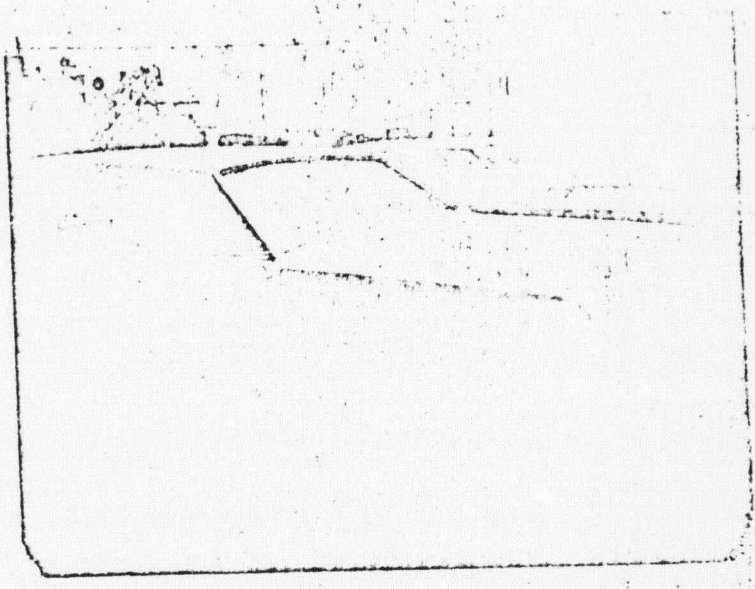
DIAGRAM, PICTURES, EXHIBITS

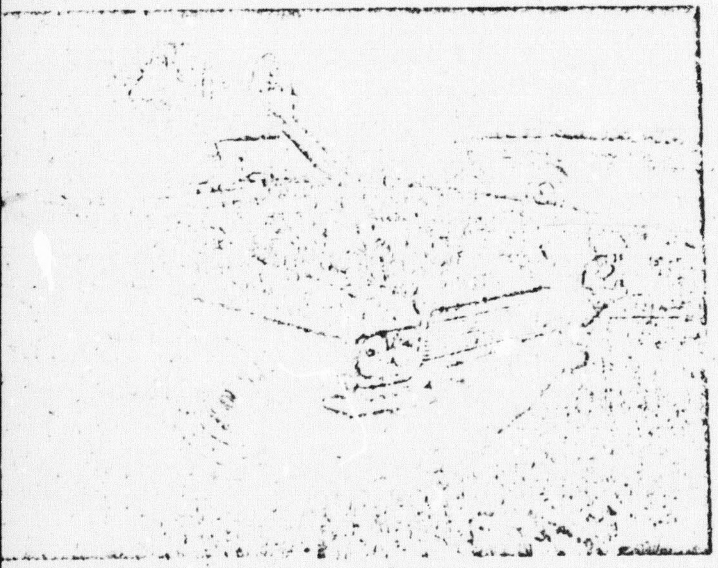
INSURED Slattery, Dorothy CLAIM NO. 769-953

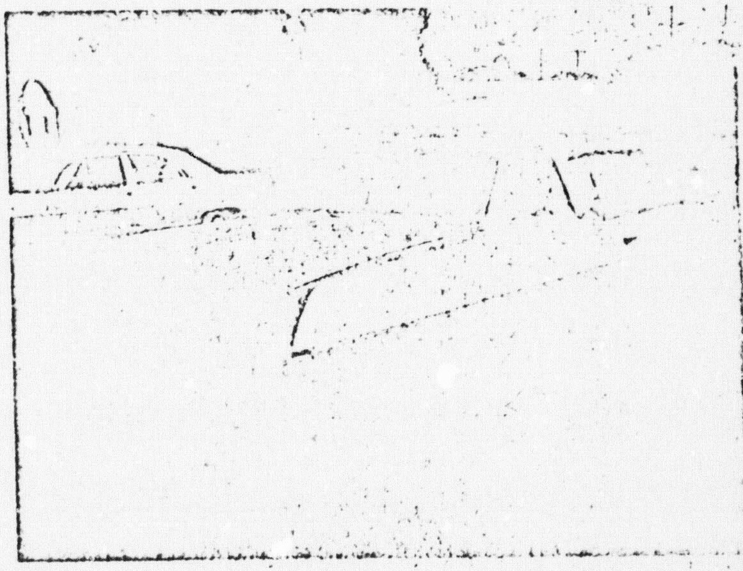
ADDRESS Rocky River, Ohio ADJUSTER Hasek - Cleveland Short - Topeka

ACCIDENT: DATE 8-23-70 TIME ________ PLACE ________________









Form 3-2 (7/64)

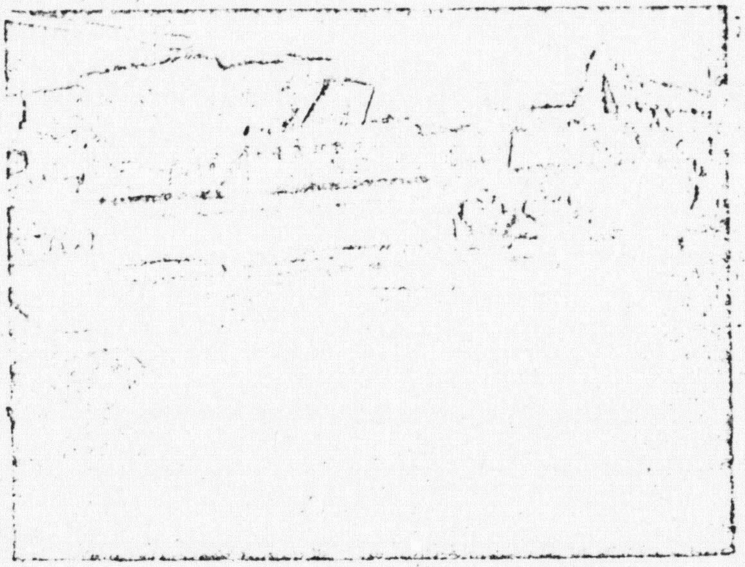
DIAGRAM, PICTURES, EXHIBITS

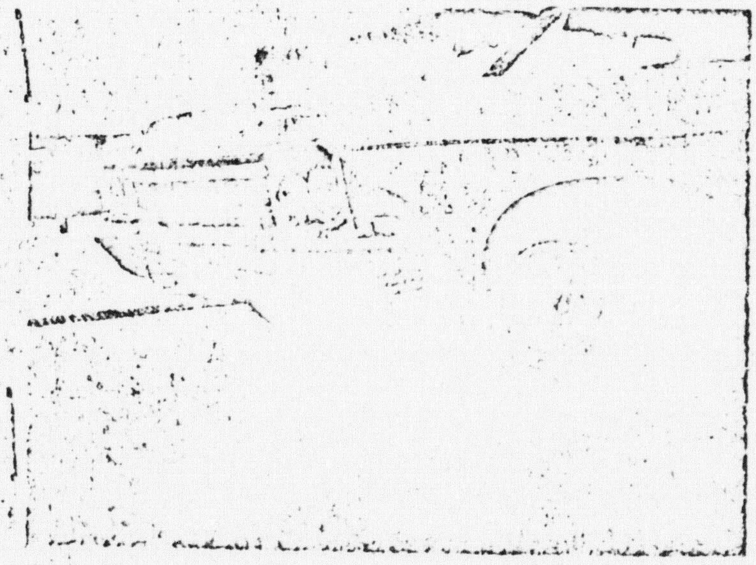
INSURED Dorothy Slattery CLAIM NO. 76 [illegible]

ADDRESS 1150 Moreland Dr Rocky River ADJUSTER [illegible]

ACCIDENT: DATE 8 23 70 TIME PLACE

Insureds 1970 Chevrolet Impala [illegible]





Form 3-2 (7/64)

(11)

SWORN STATEMENT IN PROOF OF LOSS

PLEASE CHECK COMPANY ✓

☐ American States
X☒ American Economy
☐ American States of Texas

POLICY PREFIX & NUMBER
HE 811 542

AMOUNT OF POLICY
$

AGENCY NAME, LOCATION
Hopkinson Burridge Pearse

POLICY PERIOD (FROM, TO)
11-30-67/70

By the above numbered policy of insurance you insured John J. Slattery and Dorothy M. Slattery against loss by Theft upon the property described under Schedule "A," according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.

1. Time and Origin: A loss occurred about the hour of .... o'clock .... M. on the 23 day of August, 19 70. The cause and origin of said loss were:
Contents stolen out of insured's car.

2. Occupancy: The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:

3. Title and Interest: At the time of the loss and when this policy was acquired, the interest of your insured in the property described therein was sole and unconditional ownership, and no other person or persons had any interest therein or incumbrance thereon. (State any exceptions in detail)

4. Changes: Since the said policy was acquired there has been no assignment thereof, or change of ownership, use, occupancy, possession, location or exposure of the property described, or of your insured's interest therein. (State in detail any exceptions)

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, $........; as more particularly specified on the reverse side under Schedule "C", besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. The Cash Value of said property at the time of the loss was . . . . . . $

7. The Whole Loss and Damage as stated under Schedule "B" was . . . . . $

8. The Amount Claimed under the above numbered policy is . . . . . . $ 119.50

Subrogation: The Insured hereby subrogates the said Company to all rights and causes of action the said Insured has against any person, persons or corporation whomsoever for damage arising out of or incident to said loss or damage to said property.

The said loss did not originate by any Act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were in the building damaged or destroyed, and belonging to, and in possession of the said insured at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

The undersigned claimant hereby declares he is a native born or naturalized citizen of the United States of America and that he has no connection whatsoever with any foreign government or agency unless otherwise stated hereon

The undersigned claimant further declares that he is not, by virtue of orders or regulations of the United States Government, prohibited, as a national of a foreign country or otherwise, from accepting payment of within claim, unless otherwise stated hereon

State of ....
County of ....
Subscribed and sworn to before me this .... *day of* .... 19....

X John J. Slattery
John J. Slattery
X
Dorothy M. Slattery
Insured

.... Notary Public

Form 3-119 (1-69)

(12)

APPENDIX 1895

Gulf Oil Corporation

1150 Homeland Drive
Rocky River, Ohio 44116
September 8, 1970

The Hopkinson-Burridge-Pearse Co.
1375 Euclid Ave.
Cleveland, Ohio 44115

Atten: Mrs. Halmayr

Gentlemen:

With reference to my telephone conversation with Mr. L. H. Fletcher of September 4, 1970 and with Mrs. Halmayr today reporting the loss of Mrs. Slattery's car, I am attaching the papers received by us from the transport company as requested.

The following personal property was in the car when it was picked up for shipment to Rocky River:

	Value	Age
1 Men's Raincoat	$28.17	1 month
1 Ladies Sweater	8.00	2 years
1 Men's Sweater	10.00	3 years
5 Hard cover books	13.00	2 years
1 Etch-O-Sketch	3.50	1 month
1 Cooler	15.00	3 months
1 Tote Bag	5.00	5 years
4 Bowls	1.25	6 years
2 Thermo Cups	1.00	2 years
6 Spoons	2.50	2 years
1 Emersilon Heater	1.00	1 month
1 Pillow	4.50	1 year
2 Blankets	20.00	5 years
5 Pairs Womens Shoes	60.00	3 new - 2 one to two years
1 Pair Childs Shoes	12.00	6 months
2 Ladies Bathing Suits	25.00	1 - 2 months, 1 - two years
1 Men's Bathing Suit	6.00	4 years
1 First Aid Kit	2.00	new
2 Decks Kem Playing Cards	5.00	10 years
	222.92	

I hope that this information will help to start processing our claim.

Blacklight - $5.00

Very truly your,

J. J. Slattery

J. J. Slattery

Agreed Value - 169.50 12/4/70

(13)

APPENDIX 1896

4253

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

February 25, 1972

Mr. Jack E. Detmer
Claims Manager
American States Insurance Co.
20713 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Your Insured: Dorothy Slattery
Your File No: 769-053 and C-072-953

Dear Mr. Detmer:

There is just one more item that needs to be done in order for us to complete our review of the above case, at which time we will be able to come to a written determination and any offer of settlement.

We respectfully request that the vehicle be made available for inspection, at the convenience of Mr. Slattery, so that we may review whether or not the work has been done as indicated on the estimates. You may contact Mr. Milton Guth of our Cleveland office, 1836 Euclid Avenue, Cleveland, to arrange for the inspection in question.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice-President

RJZ:mg

APPENDIX 1897

✓ bcc: Mr. Milton Guth -Aaacon Cleveland.

Dear Milt: If they contact you on this car, please arrange to have an adjuster inspect it and make a written report. We believe that the left front fender and left rear fender and front bumper have not been replaced but have merely been straightened. We want this in a written document signed by an adjuster.

R.J.Z.

Exh-254

254

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

J. J. Slattery
1150 Homeland Dr.
Rocky River, Ohio, 44116

Dec 8, 1970

Re
Dorothy Slattery

Dear Sir,

Our insurance company has requested us to submit additional information.

To help us expedite the processing of this matter, please answer only the questions checked below, as indicated, and return this letter in the enclosed envelope.

Many thanks for your cooperation.

Very truly yours,
Claims Department
Bob Mulvell

Form KI-2

(✓) Please indicate whether or not personal belongings were in the body of the vehicle. YES
If "yes", kindly list the belongings on the reverse side of this letter.

(✓) Did you retain a copy of the Bill of Lading? YES
If "yes", kindly forward a copy of the Bill of Lading to us.

(✓) Please indicate the exact amount paid to the driver on delivery of the vehicle. $50.00 (SENT TO YOU ON 11-17-70

( ) At the time of departure when the driver picked up the vehicle, did he indicate in writing the mileage on the odometer?_________ If "yes", kindly forward a copy of it to us.

( ) Kindly forward a copy of the insurance policy covering the vehicle.

( ) Kindly forward two black and white photographs of the damage to the vehicle.

List of belongings that were in car at time of shippment:

1 Men's Raincoat
1 Ladies Sweater
1 Men's sweater
5 Hard cover books
1 Etch-O-Sketch
1 Cooler
1 Tote bag
4 Bowls
2 Thermo cups
6 Spoons
1 Emersion heater
1 Pillow
2 Blankets
5 Pairs womens shoes
1 Pair childs shoes
2 Ladies bathing suits
1 Men's bathing suit
1 First aid kit
2 Decks Kem playing cards
1 Electric lantern

APPENDIX 1899

4/255

Sept 17, 1970

Birch Bros Garage
1209 Ave F
East Ely, Nevada

Re
1966 Volkswagen

Dear Wallace,

Confirming our conversation on the phone about inspecting the car and sending us photos of the car, could you please get us salvage bids on the car also. Thank you.

Yours.

Bob Maxwell

APPENDIX 1900

4216

PHONE
AMHERST
4-4611

NIGHT PHONE
AMHERST
4-2339

BIRCH BROTHERS

EAST ELY, NEVADA

September 25, 1970
East Ely, Nevada

Aaacon Auto Transport Inc.
147 West 42nd Street
New York, N. Y. 10036

Dear Sir:

Enclosed are the pictures you wanted.

Have two bids on this car, one is for $150.00 and one is for $200.00.

My opinion on the accident was caused by faulty steering.

Yours truly,
Wallace Birch
Birch Bros. Garage
Box 128
East Ely, Nevada 89315

Bill S.F.
20-

5/257

October 3, 1970

Mr. Lesley H. Browder, Jr.
7 Milford Drive
Locust Valley, New York

Dear Mr. Browder:

We have received your recent complaint and we deeply regret the difficulty you had in the transport of your vehicle.

We have thoroughly investigated the matter. It has been determined that the damage to your car was caused by operational failure and, furthermore, that there is no indication of negligence on the part of the driver.

As a result, the insurance company has declined your claim since, in accordance with Federal law and with the terms of the bill of lading under which your vehicle was shipped, as well as the specific provisions of the National Motor Freight Classification A-9, which govern that shipment, damage arising from the mechanical operating condition of the vehicle is the sole responsibility of the car owner, in the absence of additional facts.

We look forward to your next transport which we trust will be completed to your utmost satisfaction.

Very truly yours,

BOB MAXWELL
Claims Department.

BM/rvg

APPENDIX 1902

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

5/-61

December 15, 1970

Mr. Lesley Browder, Jr.
7 Millford Drive
Locust Valley, New York

Dear Sir:

Confirming our telephone conversation today, we will be happy to receive your registration and acquire the salvage value on your behalf if that is what you wish.

Alternatively, we shall be happy to have you contact Birch Brothers directly concerning the salvaged battery of your vehicle.

As I pointed out to you, under Federal law its the duty of every shipper to mitigate his damages. This includes acquiring the salvaged value on any alleged damage to cargo (automobiles).

Lastly, in accordance with your request, I am enclosing a copy of our certification of insurance.

Very truly yours,

RJZ/ml

Ralph J. Zola
Executive Vice President

Enclosure

cc: Mr. Herbert P. Giorgio
Mr. Anthony Chiusano

APPENDIX 1903

4264

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

January 5, 1970

Mr. Wedinger
Home Insurance Co.
59 Maiden Lane
New York, N.Y.

Re: Aaacon Auto Transport,Inc.

Dear Mr. Wedinger:

Confirming our telephone conversation this morning wherein I advised you that the car being transported by our company, belonging to JOHN DAVID LEVY,JR. going from St. Louis,Missouri to Quintro, Virginia, has been attached by a third-party claimant in South Carolina.

The basis of the attachment was a claim for liability against the car owner and/or Aaacon Auto Transport, Inc., in that the levy car caused damage to a vehicle owned by the third-party claimant. It is my understanding that the attachment is in the amount of one thousand ($1,000.00) dollars.

I informed you that the car owner's insurance company, Firemens Fund, has refused to put up.the bond necessary to release the car. You advised me that the Home Insurance Company alsowould not undertake to release this vehicle from the attachment cause by the claim of the third party.

I further informed you that in the event of litigation, Aaacon Auto Transport, Inc. would look to the Home Insurance Co. to failure to provide liability coverage in the matter of payment of the claim for putting up the bond and damages resulting ther from, if any.

While we will do everything to cooperate with the Home Insuranc Co., you must, of course, understand our position which is, tha while we wish to keep our experience favorable, we must look t the Home for reasonably prompt settlement of liability claims,c claims arising out of liability to third parties as a result of the operation of our vehicles in interstate commerce.

APPENDIX 1904

In the event that we are sued, or you are sued through us, it is expected that you will join Firemens Fund in the suit.

If all of the foregoing is not in accordance with your understanding, please notify me in writing immediately.

Very truly yours,

RJZ:jk

Ralph J. Zola

cc Arthur Smith
Interstate Motor
Carriers Agency
280 Broadway
New York, N.Y.

Certified Mail

5/265

February 25, 1970

Gerhard J. Petzall, Esq.
Messrs. Guilfoil, Symington
& Petzall
818 Olive Street
St. Louis, Missouri 63101

Dear Mr. Petzall:

Thank you for supplying us with the new address of Lt. John D. Levy, Jr. in Quantico, Virginia.

As you know, we stand ready to transport the car upon completion of the repairs.

We have notified the insurance company as to the facts concerning the third-party claims mentioned in your letter. I cannot speak on their behalf other than to tell you that it is my understanding that they are taking no action.

Very truly yours,

RJZ:jk

Ralph J. Zola

cc Mr. Wettinger
Home Insurance Co.
59 Maiden Lane
New York, N.Y.

File

4266

September 21, 1970

File
Levy

Mr. Robert H. Wedinger
Assistant Manager
Home Insurance Company
59 Maiden Lane
New York, New York

Dear Sir:

A Mr. Allen of your organization has recently submitted to me several affidavits for signature concerning legal suits against Aaacon Auto Transport, Inc. from third parties being defended by the Home. The three affidavits in question each concern themselves with the facts of the cases and then state with regard to the driver that he is an independent contractor and that Aaacon Auto Transport, Inc., is not responsible for his acts.

Mr. Allen informed me that in the event I refused to sign these affidavits without any change therein that the Home Insurance Co. would take action against our company by a reservation of rights or a disclaimer. As I informed you previously by letter, that Aaacon Auto Transport, Inc. is happy to cooperate fully with the Home Insurance Co. in the defense of these suits. In this regard Aaacon Auto Transport, Inc. is willing to execute any and all documents submitted in connection with the suits so long as the said documents do not misrepresent the facts as understood by our company.

We are more than willing to state under oath that the driver is an independent contractor. This is so according to the contract between the driver and our company and the car owner. However, we do not believe that it is correct legally or in line with our operations as authorized by the Interstate Commerce Commission to state that we are not responsible for the driver's acts and it is that phrase and that phrase alone which we find objectionable.

Evidence of insurance has been filed by the Home with the Interstate Commerce Commission. Both Aaacon Auto Transport, Inc. as a common carrier and the Home by virtue of its filing have a responsibility for the acts of Aaacon's drivers whether the latter being deemed independent contractors or employees. To state otherwise is contrary to the undertakings implicit in the filing of the Home Insurance Co. with the Interstate Commerce Commission and the obligations of Aaacon as a common carrier. As you may be aware, we have tried to assist the Home in minimizing claims every way permitted by law. However, we cannot put in an affidavit of fact, a statement of law which runs counter to our obligations as defined by the Interstate Commerce Act.

If you would kindly submit revised affidavits reflecting the foregoing, we would be happy to execute same. It is our opinion that it is unwise to focus upon the question of responsibility in an affidavit; however, that is a matter of trial tactics that we leave to your able counsel. Our position is merely that we cannot execute a document which may be misleading or fail to reflect the obligations of Aaacon and the Home Insurance Co. under Federal law.

Very truly yours,

Ralph J. Zola

Ralph J. Zola
Executive Vice-President

RJZ:ed
cc: Seymour Alpert
Interstate Motor Carriers Agency
280 Broadway
New York, New York

4.26

SINGPURWALLA

Bureau of Operations
26 Federal Plaza
New York, N.Y. 10007

April 15, 1970

Nozer D. Singpurwalla
Assoc. Prof. of Applied Science
School of Engineering
George Washington University
Washington, D. C. 20006

Re: AAACON Auto Transport, Inc.
New York, N.Y.

Dear Sir:

This is in reply to your letter of March 25, 1970 concerning your complaint against the above-named carrier.

(1) You forwarded a letter to Mr. A. C. Backer, Manager, AAACON Auto Transport, Inc., Los Angeles, Calif.

(2) On July 18, 1969 you received a reply from AAACON Auto Transport, Inc., New York, N.Y. signed by Michael Brady.

(3) On July 22, 1969 you wrote a letter to Mr. Donald R. Hedrick, Interstate Commerce Commission, Los Angeles, Calif.

(5) On September 8, 1969 your letter addressed to the California office of the Commission was forwarded to the New York office for reply and investigation.

(6) On September 29, 1969 I forwarded a copy of your letter of complaint to Mr. Ralph Zola of AAACON Auto Transport, Inc. and supplied you a copy of said letter, requesting that an investigation be completed into this matter.

(7) On October 2, 1969 I received a letter from AAACON Auto Transport, Inc. in reference to this matter. The original of which was forwarded to you.

File
R.Z.
4/30

APPENDIX 1906

(8) After October 2, 1969, I received no further correspondence from you until March 25, 1970.

(9) On March 27, 1970 I again contacted AAACON Auto Transport in reference to your complaint.

(10) On April 1, 1970 I received a photostatic copy of a letter dated March 31, 1970 in reference to your case, from AAACON Auto Transport, Inc.

It appears, therefore, that the Commission has replied to all your correspondence which it has received.

The Interstate Commerce Act does not confer upon this Commission any jurisdiction over the matter of settlement of claims.

As I stated, the Interstate Commerce Commission does not have any jurisdiction over the settlement of claims or similar matters. This is not due to lack of interest in the problem, but is due to lack of statutory authority.

This Commission was authorized under the Interstate Commerce Act to prescribe reasonable rules and regulations governing the filing and approval of insurance or other security for the protection of the public. It does not, however, have the authority to participate in the adjudication of claims against motor carriers, or their insurers, nor can it express any opinion as to the facts in controversy. When such matters cannot be satisfactorily adjusted between the parties at interest, they must be left for determination through appropriate proceedings in courts of competent jurisdiction.

For your further information, any investigation which this Commission initiates is not public information until the matter is resolved by the courts or the Commission and a press release issued.

It is hoped that this information of the Commission's position may be of interest to you.

Yours very truly,

Stephen P. Tomany
District Supervisor

SPT:lb

cc: AAACON Auto Transport, Inc.
147 West 42nd Street
New York, N.Y. 10036

PICK UP DATE

ESTIMATED DUE DATE 12-21-69

AAACON AUTO TRANSPORT, INC.

BILL OF LADING AGREEMENT

PICK UP CAR FROM-
Miss Jean White
1201 N. Detroit Street
Los Angeles, California
467-9173

CONSIGNEE - Jean White or Mr. T. Blake
3 Park Drive, Bob Hill
Reisterstown, Maryland
(301) 833-3842

1/48

REGISTERED CAR OWNER (SHIPPER) Jean Blake White REGISTERED ADDRESS 1201 North Detroit St. CITY & STATE Los Angeles California

CAR MAKE Volkswagen TYPE Sedan MODEL DOORS 2-Dr. LICENSE # SZC320 Calif

AUTOMATIC TRANS Stick Shift POWER BRAKES No POWER STEERING No SERIAL # 115216037

CONDITION REPORT — ✓GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER	✓	LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK ONLY
FRONT BUMPER	✓	LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
FRONT GRILLE	✓	L BODY SILL		R LIGHTS		RADIO		
FRONT LIGHTS	✓	LR WINDOW	✓	RR PANEL	✓	HEATER	✓	
HOOD	✓	LR DOOR		RR WINDOW		UPHOLSTERY	✓	
WINDSHIELD	✓	LR PANEL	✓	RR DOOR		KEYS	✓	
LF FENDER	✓	TRUNK LID	✓	R BODY SILL	✓	RR FENDER	✓	
RF VENT WINDOW	✓	R BUMPER	✓	RF WINDOW	✓	LR FENDER		
LF VENT WINDOW	✓	R WINDOW	✓	RF DOOR				

Shipper guarantees the operating and mechanical condition of the herein mentioned vehicle during transport, and assumes all responsibilitie for damage and all liabilities arising therefrom. Regardless of cause, carrier shall not be liable for any damages or consequences from or for an delay in delivery, any rental of substitute vehicle, any mechanical defect occurring during shipment, or any excess mileage. Shipper agrees th driver is an independent contractor and that driver may make any necessary repairs to said vehicle of less than twenty dollars without shipper consent and repairs in excess of twenty dollars with shipper's prior consent. Shipper shall pay for all said repairs. In the event of damage o loss to said vehicle, shipper shall retain all or part of driver's fee required to pay for same; or, if said damage or loss shall exceed driver's fee shipper shall forward driver's fee, constituting final freight bill payment due, to carrier within seven days after said damage or loss occurs. Payment to driver by shipper or shipper's agent shall constitute conclusive evidence of satisfactory delivery of vehicle. Retention of driver's fee, at shipper's option, beyond said seven day period shall constitute conclusive evidence of full settlement and satisfaction of any claim against carrier by shipper and shipper's assigns. This Bill of Lading and any shipment hereunder shall not operate as a waiver or avoidance of any contract of indemnity which shipper effected prior hereto or the obligations thereunder which shall devolve primarily upon th indemnitor, and said contract of indemnity shall be and remain in full force and effect. Unless a greater value is declared thereon ab shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obli for loss or damage thereto in excess of fifty dollars. All terms and conditions of the Uniform Straight Bill of Lading, a copy of available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under Uniform Straight Bill of Lading shall be invalid and void unless personally signed by and forwarded by the shipper to carrier. The shipper sh commence any legal action necessary to mitigate or recover damages from any third party responsible, or any source liable, therefor. A recovery by, or satisfaction of said damages to, shipper from any source liable or responsible to shipper therefor, shall, to the extent thereo operate and constitute a discharge and release of said claims against carrier by shipper and shipper's assigns. Driver alone shall be responsib for all violations of law during the time that the vehicle is in his possession. Driver and shipper consent to the personal jurisdiction of th courts of the State of New York and to service of process upon driver or shipper for the commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. This Bill of Lading agreement shall be deemed executed by the carrier at its principal offic in New York City. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or the performance or breach thereof, is non-assignable and shall be settled by arbitration in the City, County, and State of New York, provide however, that upon such arbitration the arbitrator(s) shall be bound by, and may not vary or modify, the provisions of this Bill of Ladin agreement.

PICKED UP IN THE ABOVE CONDITION EXCEPT AS NOTED		DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED	
SHIPPER OR SHIPPER'S AGENT	X	CONSIGNEE (SHIPPER'S AGENT)	X
DRIVER	X John J. Sorace	DRIVER RECEIVED FULL PAYMENT	
DATE	X 12-19-69	DATE	

TOTAL PAYMENT DUE AT DESTINATION $ 30.00 ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION PLAINVIEW, NEW YORK
NAME Mr. John J. Sorace
ADDRESS 36 Sherman Avenue
CITY Plainview, New York
PHONE (516) WE 5-5499

170
11 o/p
159

LOS ANGELES
707 SOUTH BROADWAY
MA 4-9908

APPENDIX

4264

50 Sherman Ave.
Plainview, N.Y. 11803
March 13, 1970

AAACON Auto Transport, Inc.
147 W. 42 ST.
New York, N.Y. 10036
ATTN.: Mr. Bob Maxwell

Dear Mr. Maxwell;

On DEC. 17, 1969, I obtained a Volkswagon from AAACON Auto Transport, INC. to drive from Los Angeles to Reisterstown Maryland for a Miss Jean White.

My friend and I had planned to take the northern route across, however, due to reports of heavy snowfall, we were diverted south, and decided to take route 66.

We went as far as Death Valley Junction on our way into Nevada when the car started to lose power and clang. Due to my experience with cars working for Avis Rent-a-Car, Inc. and various gas stations, I immediately pulled over and shut the engine. I checked the oil level, and found it to be near full.

We were then towed back to Death Valley Junction Service Station where the proprietor looked into it further. He confirmed my reading on the oil stick and said that the camshaft was split, maybe due to a blocked oil passage.

We were then towed, with authorization from the owner, to Las Vegas, Nevada to a Volkswagon dealer. The tow bill was $125 and the money was wired to us by the owner.

At the dealership, it was understood by me that I was to sign a release, authorizing the dealer to estimate the cost of repairs, which meant taking the engine apart.

When I returned for the estimate, I was handed a bill for approximately $429 for repairs. This shocked me to the point where I was Afraid to call the owner. I did, however, and explained the situation to a Mr. Blake, apparently the owner's advisor. Mr. Blake told me to leave the car in the dealership, and that he would have to look into it further.

I truthfully don't know what the dealer had in mind, and he apparently thought that he was dealing with a kid, because he mentioned that to Mr. Blake a couple of times while on the phone with him. Like I said, I don't know what the dealer had in mind, but my reputation is at stake. Presently, I am on the list for Patrolman for the Nassau County Police Dept., and I am currently under investigation by them for my background. I have tried hard to keep my record clean with much success, and I wouldn't like it if my good intentions were taken the wrong way and I was not permitted on the force for this reason.

Everyone has a future, how about letting me get started with mine!

Thank you very much for your time and consideration.

Sincerely,

BEST COPY AVAILABLE

APPENDIX 1909

4270

October 12, 1970

Stephen P. Tomany
District Supervisor
Interstate Commerce Commission
Bureau of Operations'
26 Federal Plaza
New York, N.Y. 10007

Re: Jean Blake White
Reisterstown, Maryland
Your Docket #017605

Dear Mr. Tomany:

I am in receipt of a copy of the letter of Jean Blake White dated July 1, 1970 received by the company on July 2nd and forwarded to me on October 9, 1970.

Please be advised that this letter has been previously answered and a refund in full made.

I believe Mr. Kampel has the file and I discussed with him the amount of the refund.

Very truly yours,

Ralph J. Zola
Executive Vice President

RJZ:ed

APPENDIX 1910

IN ORDER TO SAVE TIME
GIVE YOU PROMPT SERVICE
ARE HANDWRITING THIS LETTER

5 2 73

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

Jan 2, 1970

Jean Blake White
Box 220-C
R.R. #3
Reisterstown, Md.

Dear Miss White,

Please be advised that we are ready to move your car as soon as the repairs are paid for and the car is ready to roll. If you do not pay for the repairs, how can we move your car. We positively did not authorize repairs on your car.

Very truly yours
Bob Maxwell.

APPENDIX 1911

5/275

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

April 10, 1970

Det. Charles Scroggs
Consumer Protection Division
1200 One Charles Center
Baltimore, Maryland 21201

Re: Miss Jean Blake White

Dear Sir:

I am in receipt of a copy of your letter. I am enclosing a letter from Miss Jean Blake White.

Please be advised that to date we have written 9 letters of correspondence concerning Miss White's vehicle.

We have throughly investigated the facts surrounding the case and find:

1- The driver did not take this car on any side trips.

2- The driver had experience working with Avis Rent A- Car Corporation and was familar with operations of the automobiles.

3- The car developed engine trouble outside of Las Vegas and was towed to a Volkswagon dealer in Las Vegas at the owners authorization. The driver checked the oil level at the time the was stopped and found it to be proper.

4- The car was inoperable and could not be transported further without repairs.

5- The driver was given a release to sign which turned out to be a work authorization. However the work done to the vehicle was done at the Volkswagon dealer of Miss White's choice and made her unmoveable car moveable. If the work was not properly done or the bill was questionable, this is for Miss White to determine with the Volkswagon dealer. If the bill was correct, Miss White could not move her car without the work being done.

6- As to the driver reliability, he is a candidate for patrolman with the Nassau County Police Department and I am enclosing herewith a copy of the letter which he wrote in reply to our inquiry.

APPENDIX 1912

As to the alligations in Miss White's letter that this car was driven without oil, in our 28 years of experience transporting automobiles and our contacts with over 700 automobile repair business, we have yet to find anyone who can diagnose that a car has been driven without oil from looking at the engine, after the fact. Miss White's charges are groundless and unfounded and are the results of her suspicion and imaginiation.

I trust that this answers all of the questions that may have arrisen.

Please feel free to call upon me if you have any further questions pertaining to the above matter.

In light of Miss White's campaign of letter writting in connection with her car, copies of this letter are being sent to some of the persons and organizations from whom we received prior correspondence.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph Zola
Executive Vice President

RZ/sa

cc: Mr. Stephen P. Tomany, Interstate Commerce Commission

Honorable Clarence Long, House of Representatives

The Better Bussiness Bureau

Miss Jean Blake White.

4271

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

March 6, 1970

Miss Jean Blake White
Box 220-C RR#3
Reisterstown, Maryland

Dear Miss White:

In reply to your letter of March 2nd, please be advised that the driver was photographed, finger-printed, and his background was checked. He was also given a physical examination by one of our doctors.

Very truly yours,

RJZ:jk

Ralph J. Zola

APPENDIX 1914

4277

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

March 6, 1970

The Hon. Clarence Long
House of Representatives
Congress of the United States
Washington, D.C.

Dear Congressman Long:

In reply to the letter of Miss Jean Blake White concerning our company -- I wish to advise you of the facts of the case.

I feel that this can best be done by submitting to you some of our prior correspondence with Miss White. The car has been repaired by an authorized Volkswagon dealer in which we have no interest, no contract, no share of the profits, no commission, and from whom we receive no monies or refund for any reason whatsoever, directly or indirectly.

I have advised Miss White on no less than four occasions that when her car is repaired, we shall be happy to transport it without further charge to her.

Please feel free to contact me if you have any additional questions.

Very truly yours,

Ralph J. Zola

RJZ:jk

cc Miss Jean Blake White
Box 220-C RR #3
Reisterstown, Maryland

APPENDIX 1915

ZOLA AND ZOLA
COUNSELLORS AT LAW
1472 BROADWAY
NEW YORK, NEW YORK 10036

PAUL A. ZOLA
RALPH J. ZOLA

TELEPHONE
(212) OXFORD 5-4788

4778

January 2, 1970

Miss Jean Blake White
Box 220-C
R.R. #3
Reisterstown, Maryland

Dear Miss White:

My client, Aaacon Auto Transport, Inc., has forwarded to me your claim for review.

It appears from the facts that the driver did not authorize the repairs, but rather, the gas-station undertook to do this itself. In this regard, as you may be aware, your 1962 Volkswagen was immovable without the repairs and indeed, had to be towed into the garage in question. Obviously, it would not have been possible to continue the transport of the vehicle.

As you know, the transport agreement provides that the car owner is responsible for mechanical breakdowns in transit. Therefore, although you did not authorize the repairs, it seems to me that prudence would dictate that you pay for the repairs in question, at which time my client shall be happy to continue the transportation of your vehicle.

Very truly yours,

RJZ:jk

Ralph J. Zola

APPENDIX 1916

4279

ZOLA AND ZOLA
COUNSELLORS AT LAW
1472 BROADWAY
NEW YORK, NEW YORK 10036

PAUL A. ZOLA
RALPH J. ZOLA

TELEPHONE
(212) OXFORD 5-4788

January [illegible], [illegible]

William E. Hammond, Esq.
409 Bosley Avenue
Towson, Maryland 21204

Re: Jean Blake White
vs: Aaacon Auto Transport

Dear Mr. Hammond:

I am in receipt of your letter of January 16th.

Please be advised that mechanical repairs are solely the responsibility of the car owner, under the provisions of the Bill of Lading signed by Mrs. White.

Assuming arguendo, that the driver authorized the repairs (which he denies), my client's only liability thereunder would be the difference between the cost of repairs effected by the garage in question, and the cost of repairs at some other garage, if such difference did in effect exist. My client would be happy to receive and review any alleged authorization by its driver of repairs.

In light of the fact that the car had to be towed, and in further light of the fact that the car was towed to a Volkswagen garage, it would appear that the repairs are reasonable. Please be advised that, in the absence of fraud on the part of the garage, my client must respectfully decline any claim for mechanical repairs.

My client is willing to have its driver assist, where possible, in regard to mechanical repairs, but it does not own nor can it be responsible for the operations of any repair garage or like facility, inasmuch as the mechanical problems that arise are the responsibility of the car owner.

As I mentioned to your client in my last letter, when the car repairs are paid for, my client shall be happy to complete the transportation in question.

Very truly yours,

Ralph J. Zola

RJZ:jk

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

February 27, 1970

Miss Jean Blake White
Box 220-C RR #2
Reisterstown, Maryland

Dear Miss White:

I am in receipt of your letter of February 22nd.

Please be advised that there is no evidence that the driver did anything irregular. Your car encountered mechanical difficulties and was placed in a garage. When the repairs to the vehicle are paid for, we shall be happy to complete the delivery.

Our contract with you is quite explicit in that you are responsible for the mechanical condition of your vehicle. The only provision is that you are not responsible to reimburse the driver at destination if he presented bills in excess of $20.00. This is not the case with regard to your car. The driver is not seeking any reimbursement. The only one apparently seeking reimbursement is the garage - an authorized Volkswagen dealer which has apparently repaired the car.

When repairs are paid for, kindly inform us and we shall complete transportation.

Very truly yours,

RJZ:jk

Ralph J. Zola

4281

Latter-day Saints Hospital

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
SALT LAKE CITY, UTAH 84103

L. BRENT GOATES, F.A.C.H.A.
ADMINISTRATOR

MR. MAXWELL

Oct. 31, 1969 the brakes
ON
on the 1966 pontiac Grand Prix
went out at route 50-6 in Utah at about
9: AM no traffic car went of road and was
total. I will have the Sheriff sent a report
when I get out of the hospital.

David J. Silva

Whitney File

APPENDIX 1919

4/28 ✓

Nov 20, 1969

Louis Jacobs
85 Devonshire St.
Boston, Mass. 02109

Re Hortense Whitney

Dear Sir,

In reference to your letter dated Nov. 17, 196 we will give you the report of the Driver of the Whitney Car. Quote.

"On Oct 31, 1969, the brakes on the 1966 Pontiac Grand Prix went out at route 50-6 in Utah at about 9: A.M. no traffic car went off road and was total.

Very truly yours.
Bob. Maxwell.

APPENDIX 1920

File

5/28/

ZOLA AND ZOLA
COUNSELLORS AT LAW
1472 BROADWAY
NEW YORK, NEW YORK 10036

PAUL A. ZOLA
RALPH J. ZOLA
MICHAEL G. AMES

TELEPHONE
(212) OXFORD 5-4788

May 15, 1970

Mr. Len Schloer
Interstate Commerce Commission
Washington, D.C.

Dear Sir:

Confirming our telephone conversation of this morning, this is to advise you that we are prepared to answer any questions that Attorney Jacobs might have if he would merely favor us with a request therefore.

Very truly yours,

Ralph J. Zola

RJZ/rw

cc: Atty Jacobs- Boston, Mass.
Dinkes, Mandel & Dinkes-New York, N.Y.
file

OFFICE
423-4828

RES.
963-8843

DONALD J. ORKIN
ATTORNEY AT LAW
141 MILK STREET
BOSTON, MASS. 02109

5/286

November 1, 1971

Zola & Zola, Esquires
1472 Broadway
New York, N.Y. 10036

Attention: Ralph Zola, Esq.

Re: Hortense Whitney matter

Dear Ralph:

I have been informed by Attorney Harvey Pies that he has entered into negotiations with you relative to a settlement of the Whitney matter. I had marked my Motion to Stay the Action for this friday, November 5, but he called me to seek a postponement while your negotiations were going on. I consented to the postponement but pointed out that I would re-mark the Motion if a settlement could not be reached. We were in Court last friday, October 29, at which time I informed the Court of my Motion and the case was removed from the Auditor's trial list. Please let me know the outcome of the negotiations.

Very truly yours,
Donald J. Orkin
Donald J. Orkin

DJO/em

APPENDIX 1922

Ex 288

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

January 7, 1970

Mr. Lewis Nadler
4958 Horatio Parkway
Bayside, New York

Dear Mr. Nadler:

Your file has been reviewed by our company.

It appears that the first accident involving your vehicle was the result of a mechanical defect, for which our company must decline liability.

As to the second accident, there is a question as to whether or not the accident resulted in an "act of God".

However, in order to settle the claims and controversies in question, we are enclosing our check for One Hundred ($100.00) Dollars.

Very truly yours,

Bob Maxwell

BM:jk
Enc

Ex 29'

New York, March 10th., 1971

should b
197

AAACON AUTO TRANSPORT, INC.
147 West Forty-Second Street,
New York, N.Y. 10036.

Att'n. Mr. Ralph J. Zola,
Executive Vice President.

Dear Mr. Zola:

In response to your letter of January 7, 1972 in reference to a car I drove, a Buick belonging to a Mr. Irving Moross, from New York to West Palm - Beach, Florida.

I would like to inform you that the car in question was properly driven by myself, and I consider that not abuse was comitted by me.

However, if anything had happened to the car it must had been due to the age of the car plus more than 70,000 plus miles that were on the speedomet

Very truly yours,

Pedro Abella.

APPENDIX 1924a

Chrysler Corporation's Warranty and Limitation of Liability for 1970 Model Passenger Cars

Vehicle and Owner Identification

Vehicle Serial No. Delivery Date

Owner's Name

Selling Dealer's Name Account Number

City State or Prov.

This folder contains:

- Vehicle and first owner identification
- Chrysler Corporation's warranty
- Owner maintenance responsibilities
- Other warranty information

IMPORTANT NOTICE TO OWNER

Protect this warranty. It identifies you and this vehicle as being entitled to service under the terms and conditions of Chrysler Corporation's warranty.

This warranty folder, properly completed by your selling dealer, should be presented each time you require service under the warranty.

CHRYSLER
CORPORATION

For vehicles sold in Canada: The names Chrysler Corporation or Chrysler Motors Corporation wherever the same appear herein shall be deemed to be deleted and the name Chrysler Canada Ltd. used in substitution therefor.

APPENDIX 19246

CHRYSLER CORPORATION'S WARRANTY AND LIMITATION OF LIABILITY

For 1970 Model New Passenger Cars

(Except Those Equipped With 426 Cu. In. "Hemi" or 440 Cu. In. "Six-Pack" Engines).

Chrysler Corporation warrants this vehicle to the first registered owner as follows:

- For 12 months or 12,000 miles, whichever occurs first – the entire vehicle, except tires;
- For 5 years or 50,000 miles, whichever occurs first – the engine block, head and all internal engine parts, water pump, intake manifold, transmission case and all internal transmission parts, torque converter, drive shaft, universal joints, rear axle and differential.

Any part of this vehicle manufactured or supplied by Chrysler Corporation (except tires) found defective in material or workmanship will be repaired or replaced by an authorized Chrysler Motors Corporation dealer at his place of business without charge for parts or labor.

Warranty repairs should be obtained from your Selling Dealer unless he has ceased to do business as an authorized Chrysler Motors Corporation dealer, or you are travelling or have moved to a different locality and cannot return to your Selling Dealer.

This warranty commences on the date of sale to the first registered owner or the date the vehicle is first placed in service, whichever occurs first.

This warranty will not apply to any vehicle on which the odometer mileage has been altered. Nor will it apply to: (1) normal deterioration due to wear or exposure; (2) normal maintenance services and the parts used in connection with such services; (3) repairs required as a result of accident, abuse, negligence, racing, or failure to perform the maintenance services specified in this warranty folder; (4) vehicles manufactured and/or operated outside the United States, Canada, Puerto Rico or the Virgin Islands.

THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES OR CONDITIONS, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES UNDER THIS WARRANTY ARE EXCLUSIVE AND NEITHER CHRYSLER CORPORATION NOR CHRYSLER MOTORS CORPORATION ASSUMES NOR AUTHORIZES ANYONE TO ASSUME FOR THEM ANY OTHER OBLIGATION.

CHRYSLER CORPORATION'S WARRANTY ON NEW PASSENGER CARS EQUIPPED WITH HIGH PERFORMANCE 426 CU. IN. "HEMI" OR 440 CU. IN. "SIX PACK" ENGINES

Chrysler Corporation's warranty on cars equipped with these high performance engines is the same as the warranty on other passenger cars and subject to the same terms and conditions, as set forth above, except that this warranty applies to the entire vehicle (except tires) for 12 months or 12,000 miles, whichever occurs first, ONLY. The 5 year or 50,000 mile coverage on the power train and other components DOES NOT APPLY to cars equipped with these high performance engines.

CHRYSLER CORPORATION'S WARRANTY ON NEW PASSENGER CARS EQUIPPED WITH MAXIMUM PERFORMANCE 426 CU. IN "HEMI" ENGINES

Chrysler Corporation's Passenger Car Warranty does not apply to cars equipped with maximum performance 426 cu. in. "hemi" engines designed and intended for use in supervised acceleration trials, circuit racing, and other competitive "speed" events. Cars equipped with these "maximum performance" engines ARE SOLD "AS IS" WITHOUT ANY WARRANTY EITHER EXPRESS OR IMPLIED INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

APPENDIX 1924c

EXAMPLES OF ITEMS NOT COVERED BY WARRANTY

Items, such as the following, normally are not considered defects in material or workmanship and, as such, normally are not covered by the warranty. Accordingly the cost of such items are owner responsibility unless required as a result of a defect in material or workmanship.

- Routine maintenance services such as oil changes, tune-ups, adjusting or cleaning the carburetor or fuel system, front end alignment, wheel balancing, rotating of tires, brake and clutch adjustments.
- Replacement of items such as spark plugs, ignition points, condenser, fuel, air, oil filters used in connection with routine maintenance services;
- Repairs necessitated by accident, abuse or negligence;
- Repairs required as a result of failure to perform the "owner maintenance responsibilities" specified in this folder;
- Repairs required as a result of modifications not recommended or approved by Chrysler;
- Normal wear or deterioration of such items as hoses, belts, upholstery, soft trim, bright metal parts (i.e., grille, mouldings and bumpers), windshield wiper blades, brake lining, clutch lining;
- Repairs required as a result of racing, sustained high speed use, acceleration trials, wide open throttle operation, high speed acceleration or shifting transmission gears at high engine RPM.
- Adjustment of such items as transmission linkage, controls or bands, and brakes and clutch;
- Loss of engine oil, lubricant, anti-freeze or refrigerant;
- Removal of engine carbon or sludge;
- Repairs required as a result of hauling trailers without suitable equipment, or hauling trailers in excess of rated capacity of the vehicle or failure to follow the requirements for vehicles used to pull trailers outlined in the Operator's Manual supplied with this vehicle.

Also, Chrysler assumes no responsibility for loss of use of the vehicle, loss of time, inconvenience or other consequential damage including, but not limited to, expense for gasoline, telephone, travel, lodging, loss or damage to personal property or loss of revenues.

USED VEHICLE WARRANTY – FOR SECOND REGISTERED OWNERS

The second registered owner who purchases this vehicle (excluding vehicles equipped with 426 cu. in. "Hemi" or 440 cu. in. "Six Pack" engines) for use and not for resale may apply for Chrysler Corporation's Used Vehicle Warranty if the time and mileage limits of the new vehicle warranty have not expired and the original new vehicle warranty was otherwise in effect. Such application may be made only: (1) within 30 days after the second registered owner purchases the vehicle; (2) through an authorized Chrysler Motors Corporation dealer; and (3) on the Chrysler Motors Corporation "Application For Used Vehicle Warranty" form. The authorized dealer will charge the second owner a fee not to exceed $25 (plus any applicable state or local taxes) for applying for the Used Vehicle Warranty.

If its records indicate that a vehicle is eligible and the application is properly submitted, Chrysler Motors Corporation will validate the "application" and return it directly to the applicant. THE VALIDATED "APPLICATION" FORM MUST BE PRESENTED TO AN AUTHORIZED DEALER WHENEVER SERVICE IS REQUIRED UNDER THE USED VEHICLE WARRANTY. If it determines that the vehicle is not eligible for Used Vehicle Warranty, Chrysler Motors Corporation will notify the applicant, and the dealer will refund the "application fee".

Chrysler Corporation's Used Vehicle Warranty provides the second registered owner with the unexpired portion of the new vehicle warranty, subject to all of the terms and conditions thereof, provided that the second owner pays to the servicing dealer the first $25 of the total cost of all of the warranty service(s) performed (plus any applicable state or local taxes) each time the vehicle receives warranty service after the expiration of the 12 month or 12,000 mile coverage of such warranty. (Prior to the expiration of the 12 month/12,000 mile coverage, **warranty services will be provided on a no charge basis.)**

81-970-0019

Printed in U.S.A.

APPENDIX 1924 d

OWNER MAINTENANCE RESPONSIBILITIES

THE PERFORMANCE OF MAINTENANCE SERVICES IS THE OWNER'S RESPONSIBILITY. FOR WARRANTY PROTECTION, WE RECOMMEND THAT THE OWNER RETAIN EVIDENCE OF THE PERFORMANCE OF THESE AND ALL OTHER SERVICES.

The warranty will not apply to repairs required as a result of not having the following services performed:

● Every 3 months or 4,000 miles (whichever occurs first)	Change engine oil
● Every second oil change	Change engine oil filter
● Every 6 months	Check operation of crankcase ventilator valve and clean carburetor air filter and crankcase inlet air cleaner
● Every year	Replace crankcase ventilator valve
● Every 2 years	Replace carburetor air filter

These maintenance services should be performed at more frequent intervals if the vehicle is subject to severe service such as, taxi or police use, operation in extremely dusty or low temperature areas, or for extended periods of idling, trailer towing, or short runs which prevent the engine from reaching normal operating temperatures.

Additional maintenance services are listed in the Operator's Manual supplied with this vehicle and should be performed to provide maximum operating efficiency.

These services may be performed by any service garage or by your selling dealer as a part of the Certified Car Care Systematic Maintenance Program.

TIRES

Tires originally installed on new passenger cars built by Chrysler are warranted separately by the tire manufacturer and not by Chrysler.

Although the specific terms of these warranties will differ, generally tire manufacturers guarantee their tires for the life of the original tread against defects in material and workmanship and failure caused by normal road hazards such as blow-outs, fabric breaks, cuts, bruises and snags. These guarantees do not cover damage or failure caused by punctures, running flat, fire, wrecks, chain cuts, irregular wear, abuse, etc. Generally these guarantees provide that any tire determined to be defective or damaged within the terms of such guarantee will be repaired or replaced at the tire manufacturer's option. If replacement is made, the owner must pay the tire manufacturer's current adjustment base price plus transportation charges and taxes for such tire less a pro-rata allowance based on the amount of the original tread remaining on the tire replaced. In some instances, the owner must also pay a service charge.

Warranty services pertaining to tires may be obtained from an authorized service station of the tire manufacturer or an authorized Chrysler Motors Corporation dealer providing such services. If necessary, an authorized Chrysler Motors Corporation dealer will assist an owner in requesting an adjustment.

The foregoing guarantees specifically provide that they do not cover consequential damages and that they are the only guarantees issued by the tire manufacturers.

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

4299

June 1, 1971

Sanford J. Rosen, Esq.
2204 Mathews Drive
Austin, Texas 78703

Dear Mr. Rosen:

Your letter to the Interstate Commerce Commission has been forwarded to me for reply.

Please be advised of the following: (1) a copy of the Bill of Lading was given to Catherine P. Rosen at the time the car was delivered to our company; (2) any doubts on your part as to the foregoing statement can be dismissed by reviewing the enclosed Bill of Lading signed by Catherine P. Rosen; (3) a copy of a similar Bill of Lading was given to Michael H. Redlin at the time we received his vehicle; (4) any doubts as to the foregoing statement can be dismissed by reference to the enclosed Bill of Lading signed by Michael H. Redlin; (5) Michael H. Redlin's claim was settled in full on September 4, 1970. A copy of the statement is annexed hereto; (6) all of the drivers used by our company are investigated. They are given physicals, their backgrounds are checked, they are photographed and finger printed and they are given full instructions as to the proper operation of the vehicle under federal law. Inasmuch as our authority permits us to use "casual drivers," as that term is defined by federal law, the drivers are indeed "independent contractors".

We are, however, fully responsible for all their acts and with regard thereto we undertake a full investigation of every claim made to our company.

As to your claim of damage to your vehicle, our company is responsible for any damage resulting from an accident or physical collision of your vehicle.

However, by the terms of our tariff and under federal law we are not responsible for inherent operational defects arising in your vehicle. Your vehicle was not in any collision accident nor was it otherwise damaged by our company. The inherent working of the mirror control and rear window are, in the absence of additional facts, operational defects involving the inherent condition of the vehicle, a claim for which we must decline.

Please feel free to call upon me if you have any further questions.

Very truly yours,

Ralph J. Zola
Executive Vice-President

RJZ:emm
Enc.

cc: Stephen P. Tomany - ICC

6/302

[illegible], South Dakota
January 5, 1972

AAACON Auto Transport, Inc.
Attention: Bob Maxwell
147 West 42nd Street
New York, N. Y. 10036

Dear Sir:

In response to your telephone call today regarding the 19[illegible] Ford belonging to W. F. Wolfe, Jr., I would say it is a possibility that this car froze up en route due to the extreme cold and wind that day. Possibly when the thermostat reopened the radiator, being frozen, would not circulate and consequently the engine would become over heated. I have no way of knowing for sure that this is what happened, but feel that this is what could have happened. I do know the engine is completely ruined from overheating.

Sincerely,

CLIFF'S SERVICE

CS:AS

By: Cliff [illegible]

605-229-2515

APPENDIX 1925

STATE OF VIRGINIA)
)SS:
COUNTY OF NORFOLK)

§ 303

THEODORE D. ALLEN, being duly sworn, deposes and says that:

1. The following facts summarize what I have previously told AAACON AUTO TRANSPORT, INC. on the telephone.

2. I drove a car belonging to WILLIAM WOLFE, which car was going from Washington to Seattle, during the end of December, 1969, and the beginning of January, 1970.

3. The trip was uneventful until I entered South Dakota, by way of U.S. Interstate Route 90, at which point I noticedthat the engine temperature was rising. I pulled the car into a garage and I was advised by the mechanic that the radiator was freezing at the bottom. In order to protect the vehicle, I added anti-freeze to it, at my own cost and expense.

4. Thereafter, I travelled approximately 120 miles, and just outside of Wall, South Dakota, I stopped the car again due to the fact that the temperature gauge indicated that the temperature was rising. I pulled the car over to the side of the road, and got a ride to Wall, South Dakota. At the first gas station, I requested the station owner to bring the car in, which he did. He examined the vehicle and told me that he could not repair it, so we arranged to have Cliff's Garage in Wall take the vehicle. Cliff's Garage looked at it and told me that apparently the anti-freeze was insufficient, perhaps from a leak, and that he would contact William Wolfe about having the car repaired.

5. I left the car with Cliff's Garage and notified Aaacon's office in Washington as to what had transpired.

6. I never raced the car nor did I ever drive it when it was overheated.

Theodore D. Allen

Theodore D. Allen

Sworn to before me this
22 day of February, 1972.

1

AAACON AUTO TRANSPORT INC.

NEW YORK • EO 3-2222 147 West 42nd St.
CHICAGO • HA 7-0086 202 South State St.
DETROIT • 963-2111 1249 Griswold
HOUSTON • CA 7-3146 517 La Branch St.
ST. LOUIS • CE 1-7035 511 Locust St.
PHOENIX • 264-0201 222 West Osborn Rd.
BOSTON • KE 6-0120 250 Boylston St.
CLEVELAND • 781-6263 1148 Euclid Ave.
MINNEAPOLIS • 336-8666 727 Hennepin Ave
PHILADELPHIA • LO 4-4326 1612 Market St.

WASHINGTON, D. C.
1025 VERMONT AVE. N. W.
737-7030
ICC # MC 125808

LOS ANGELES • MA 4-6644 707 S. Broadway
ATLANTA • 523-7644 175 Peachtree N.E
SAN DIEGO • 234-6511 235 Broadway
SAN FRANCISCO • 431-0664 1095 Market St.
NEW ORLEANS • 525-0257 921 Canal St.
DALLAS • RI 2-4271 912 Commerce St.
WASHINGTON, D.C. • 298-8336 1025 Vermont
SEATTLE • MU 2-2277 1904 3rd Ave.
MIAMI • 358-1225 10 N.E. 3rd Ave.
KANSAS CITY • HA 1-1300 1005 Grand Ave.

BONDED and INSURED INTERSTATE AUTOMOBILE TRANSPORTERS • LICENSED BY THE INTERSTATE COMMERCE COMMISSION - NUMBER MC 125808

430

Rand [illegible] car in Wall S.D.

Brigadier General William R. Wolfe, Jr.
Deputy Commanding General
U.S. Army Headquarters, Alaska
APO Seattle 98731

January 23,

Dear General Wolfe:

Re: Our telephone call January 21st., I have checked with our claims manager in New Yonk office, land am forwarding a copy of your letter. It is as I mentioned we are not responsible for mechanical failure which developes enroute. The driver did take reasonable precautions as is indicated by his telephone report to me on January 5th. He reported stopping twice at different garages for repairs to engine.

If you would please notify us when your car has been repaired, shipment will be completed to Seattle.

If you have any further questions please write to Paul Zola at our New York office (as above).

cc:AAACON-N.Y.

1/26 - Walters not to write any letters on any claim

Very truly yours,

APPENDIX 1928

Stephen J. Walter

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4305

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

January 30, 1970

William R. Wolfe, Jr.
Brigadier General, USA
Department of the Army
APO Seattle, Wash. 98731

Dear Mr. Wolfe:

Your letter to our company has been forwarded to me for reply.

A review of the facts indicate that your car ran into mechanical difficulties in South Dakota and that the driver was forced to leave the car at a garage in that vicinity for mechanical repairs. As you know, any mechanical difficulties occurring during shipment are the responsibility of the car owner. This is provided by the Bill of Lading, a copy of which you have received.

Once the vehicle is in proper operating condition, we shall be happy to complete the transportation thereof. As you may be aware, our company does not own, operate or participate in the profits of any garage. You may have the car repaired wherever you see fit.

We trust that this clarifies the matter to your satisfaction.

Very truly yours,

1964

Ralph J. Zola
Executive Vice-Pres.

RJZ:jk

APPENDIX 1929

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

5/306

February 6, 1970

Stephen P. Tomany
District Supervisor
Interstate Commerce Commission
26 Federal Plaza
New York, N.Y. 10007

Dear Mr. Tomany:

In response to your call concerning the letter of Brigadier-General Wolfe, Jr. -- I have reviewed the file in this matter. It appears that Mr. Wolfe has corresponded with us on several occasions and that both Mr. Walter of our Washington office and we here at the New York Office, have replied to him.

The chronology supplied by Mr. Wolfe contains certain inaccuracies and mis-characterizations which this letter shall seek to correct. Brig-General Wolfe's 1964 Ford was to be transported from Washington to Seattle. The driver experienced overheating difficulties and contatted our Washington office. The driver stopped at two service stations - neither of which was able to locate the problem. As a result, the driver placed the car in Cliff's garage in Wall, South Dakota. There has been no indication that the driver acted negligently or other than in a responsible manner.

Due to the age of the vehicle, it is reasonable to expect the possibility of some operational difficulties in a 3000-mile cross country trip. We have, by letter, on two occasions, expressed our willingness to complete the transportation of this vehicle to its destination, once the car has been made mechanically fit and safe for travel. The first, was Mr. Walter's letter of January 23rd, and the second was my own letter of January 30th. To date, we have not heard from Brig. General Wolfe.

Please feel free to call upon me if you have any questions in this or any other matter.

Very truly yours,

Ralph J. Zola

RJZ:jk

APPENDIX 1930

cc William R. Wolfe, Jr.
Brigadier General, USA

5/307

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

February 10, 1970

William R. Wolfe, Jr.
Brig-General, USA
Dept. of the Army
APO Seattle, Washington 98731

Dear Sir:

Your letter of February 6th has no doubt crossed with my letter of February 6th. However, since it continues to make unsubstantiated allegations and unwarranted characterizations about our company, I am taking this opportunity to reply.

The substance of my letter of February 6th indicates that the driver experienced mechanical difficulties with your car, a 1964 Ford which was overheated. After taking the car to two garages he finally placed it with Cliff's Garage in Wall, South Dakota. Neither the two prior garages or Cliff's Garage could make immediate repairs to the vehicle. Cliff's Garage had to dismantle the engine to find out the difficulty. We do not own or share in the profits of any garage.

The driver informed us of his actions and acted in a responsible manner. There is not one scintilla of evidence of negligence on the part of the driver. Furthermore, there is no evidence that the car was operated under excessively high speeds.

With a car of advanced age such as yours, problems of the type encountered while regrettable, do occur. When your car has been repaired and [illegible] fit for the road, we shall be ready to re-dispatch it to its destination. In considering the reasonable time for the dispatch of your vehicle, one must consider its destination, its age and condition and matters of like import.

While we have not received a copy of Mr. Stafford's letter referred to in your letter of February 6th -- please be advised that we stand ready to honor all legitimate claims that are placed with our company in accordance with our obligations under law.

Please feel free to contact me if you have any additional questions on this matter.

Very truly yours,

Ralph J. Zola

RJZ:jk

cc George M. Stafford
Interstate Commerce Commission

X 308

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

February 27, 1970

William R. Wolfe, Jr.
Brigadier-General, USA
Dept. of the Army, Alaska
APO Seattle 98731

Dear Mr. Wolfe:

I am in receipt of your letter of February 24th 1970.

Please be advised that contrary to the statement contained therein, it is our understanding that when the car started overheating, the driver did his best to bring it immediately to three garages. It was only the third that could find anything wrong. Since I do not have personal knowledge of the incident, I can only assume that the service stations had garages annexed thereto, or vice versa.

We do not "admit" that the driver continued to operate the car when it was overheated, as your letter implies. I sincerely believe that no point will be served by further discussing the word usage in like letters or the vocabulary contained therein. The facts appear to be simple: the car encountered mechanical difficulties; the driver attempted to have these repaired; the repairs required the car to be placed in a service station for a long period of time.

When we accept a car for shipment, we do not have it mechanically inspected. In this regard, we rely on the actions of the owner and our Bill of Lading so states.

Based on the foregoing, we must respectfully decline your claim. When the car is repaired, we shall be happy to complete delivery.

Very truly yours,

RJZ:jk

Ralph J. Zola

cc Stephen P. Tomany
Interstate Commerce Commission

4309

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

April 8, 1970

William R. Wolfe, Jr.
Brigadier General, USA
Deputy Commanding General
Department of the Army
Headquarters, United States
Army, Alaska
APO Seattle 98731

Dear General Wolfe:

Your most recent letter to Mr. Stephen P. Tomany of the Interstate Commerce Commission dated March 30, 1970 has been forwarded to me for reply.

On March 6th, we forwarded you a copy of the Bill of Lading and informed you that we were conducting an investigation. That investigation has not as yet been completed. However, the results todate are as follows:

1. Your car was taken in for mechanical difficulties to two garages both of whom did work. This was prior to the time the engine went completely.

2. The driver attempted to have the mechanical conditions repaired.

3. The driver was not a mechanic, and, therefore, had to rely upon the repair work done by the garages.

4. There is no evidence of any theft or conversion or fraud on the part of the driver which would lead to a violation of Fidelity coverage.

5. The Bill of Lading pick up date is normally filled in when the driver picks the car up for transportation so that a reasonable number of days on the road can be alloted.

APPENDIX 1933

Your allegations concerning our company and the issue of reasonable dispatch and evidence of our responsibility are unfounded and untrue.

Further, you have failed to this date to offer any indication that the driver was negligent. Nor, has our investigation revealed said negligence. On the contrary, it would appear that the driver was exceedingly consciencious. Therefore, we must respectfully decline your claim.

Please refer to my letters of January 30th, February 6th, February 10th, February 17th, February 27th and March 6th for answers to any other questions you might have.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

By
Ralph J. Zola
Executive Vice-President

RJZ:de
cc: Mr. Stephen P. Tomany
District Supervisor
Interstate Commerce Commission
Bureau of Operations
26 Federal Plaza
New York, N.Y. 10007

Exhibit 311

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 · (212) LO 3-2222

August 10, 1971

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frank Coggins, Jr.
216 Church Street
Elberton, Georgia

Dear Mr. Coggins:

I have been advised that your vehicle is currently located at Al's Auto Parts, West Palm Beach, Florida, telephone No. 965-2640.

It is suggested that you, or your insurance company if they have received title on your behalf, remit for damages by arranging to receive the salvage value of the vehcile in question forthwith.

This letter is submitted without prejudice.

Very truly yours,

Ralph J. Zola

APPENDIX 1934 A

43 11

BEACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

August 12, 1971

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frank Coggins, Jr.
216 Church Street
Elberton, Georgia

Dear Mr. Coggins:

I have been advised that your vehicle is currently located at Al's Auto Parts, West Palm Beach, Florida, telephone No. [illegible].

It is suggested that you, or your insurance company if they have received title on your behalf, remit for damages by arranging to receive the salvage value of the vehicle in question forthwith.

This letter is submitted without prejudice.

Very truly yours,

Ralph J. Zola

RJZ:rdv

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO
Mr Frank Coggins

STREET AND NO.
216 Church St.

P.O., STATE AND ZIP CODE
Elberton Ga

POSTMARK OR DATE
8/12-71

	OPTIONAL SERVICES FOR ADDITIONAL FEES	
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (2 pounds or less)		45¢

(See other side)

POD Form 3800
July 1969

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

GPO : 1969 O—358-312

No.

APPENDIX 1934B

E4 3/2

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

Aug 23, 1971

Interstate Motor Carriers Agency
280 Broadway
New York, New York 10007

Refer to our Claim # ______

Gentlemen:

We are enclosing the attached documents to fulfill the notice provision of our liability policy only.

Registered Owner: Coggins Frank Jr Our Bill of Lading No. G 9429

These are a first submission ( )

✓ These are further to our mailing of: 7/12/71

Very truly yours,

Bob Maxwell

Claims Department

Documents enclosed:

( ) Original Freight Bill ( ) Bill of Lading

( ) Accident Report ( ) Damage Estimate (s)

( ) Other: 2 letters from 2 R.O Ins Co who are third Parties.

Date of Acc 7/3/71

Ex 316

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

October 1, 1971

Mr. Frank Coggins, Jr.
Coggins Granite Industries, Inc.
Post Office Box #250
Elberton, Georgia 30635

Re: ICC No. CI-56837

Dear Mr. Coggins:

I am in receipt of your letter of August 10th to the Interstate Commerce Commission which has just been forwarded to me for reply.

As I mentioned to you on the telephone in the past, the obligation of a carrier is to respond with a money payment for proper claims made for damage to cargo in transit. It is the obligation of the cargo owner (in this case, yourself as owner of a vehicle) to present a proper claim for a given amount of money and to mitigate damages by the salvage of the cargo.

To date, we have not received from you a proper claim nor have you indicated that you have taken proper steps to mitigate the damages in question.

Upon receipt by us of evidence that you have done so, we shall be happy to process your claim.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice President

RJZ/fv

cc: Interstate Commerce Commission

APPENDIX 1936

4317

UNITED STATES FIDELITY AND GUARANTY COMPANY
ATLANTA OFFICE
300 TITLE BUILDING
ATLANTA, GEORGIA 30303
K. D. BURGESS, JR., MANAGER
TELEPHONE: 404/522-4221

December 6, 1971

APP
X-CD
104 DEC 10 1971
POSTDATE

Mr. Ronald Ledden
Claim Representitive
State Farm Mutual Automobile Ins. Co.
6400 Atlantic Boulevard
Jacksonville, Florida 32211

RE: 0200 APD 69965 - Insured: D. F. Coggins, Jr.
Your Claim No. 11-4043-964
Your Insured: Mrs. Mary C. Ross
D/A: 7/3/71

Dear Mr. Ledden:

We are in receipt of your letter of November 16, 1971.

Please be advised that the operator of this car was not operating the vehicle with the permission of the named insured and we have denied coverage to the driver and the company for whom he was working at the time.

Briefly stating, thefacts of the matter are that on June 23, 1971 our insured signed a contract with Aaacon Transport Company, Inc. to take his car from Elberton, Georgia to Denver, Colorado. Instead, the car was taken to Florida where on July 3rd, it was involved in an accident. The car was, without doubt, being used without the permission of our insured.

Our insured has approached Aaacon Transport, Inc. and they have assured him that they will honor any and all claims stemming from the accident as soon as they have been able to establish the facts surrounding this accident. We therefore, feel that you should proceed with Subrogation claim against Aaacon Auto Transport Inc. 147 West 42nd Street, New York, New York.

Thank you for your cooperation.

Very truly yours,

Larry C. Langley

Larry C. Langley
ADJUSTER

LCL/mjg

43/5

ZOLA AND ZOLA
COUNSELLORS AT LAW
1472 BROADWAY
NEW YORK, NEW YORK 10036

PAUL A. ZOLA
RALPH J. ZOLA
MICHAEL G. AMES

TELEPHONE
(212) OXFORD 5-4788

January 28, 1972

Robert E. Whitley, Esq.
Messrs. Hopkins & Gresham
2850 National Bank of Georgia Bldg.
Atlanta, Georgia 30303

Re: Coggins vs.
Aaacon Auto Transport, Inc.
et al.

Dear Mr. Whitley:

This letter will confirm our telephone conversation of yesterday concerning the disposition of the above-captioned litigation.

To summarize, we informed you that Aaacon Auto Transport, Inc. wrote letters to the United States Fidelity & Guaranty Company on October 27 and December 30, 1971, in an attempt to settle the claim in question, but received no reply. You stated that this was probably due to the fact that the file had been turned over to your firm for litigation, and was not available to the United States Fidelity & Guaranty Company.

At the time I spoke to you on the phone the early part of last week, I informed you that at this time Aaacon was willing to reimburse your client for the fair market value of the vehicle in question, less the salvage value, and I proposed to you a computation based on the fair market value of the car, which included consideration of the fact that the car had over 8,000 miles on it when tendered to Mr.Donath by Mr. Coggins.

You informed me that the U.S.F.& G. was not aware of the fact that the car had any mileage on it but believed the car to be practically undriven (I believe the phrase you used was "just driven out of the dealer's showroom"). You said that you would get back to me after ascertaining the facts, which you did by telephoning me yesterday.

In our first conversation, I mentioned to you that if there were any miscalculations concerning the basis of our offer of settlement, we would be happy to reconsider the offer of settlement based upon any additional facts or corrections that you might advise us of. In our telephone conversation of yesterday, you did not inform me of any additional facts but have informed me that your client wishes a settlement of $1,000 more than the amount offered by our client, which was based upon a calculation of the fair market value.

The purpose of this letter is to advise you that our client stands ready to tender payment based upon any reasonable calculation of the damages in question, and that if said calculation is disputed by your firm, we will be happy to reconsider same on any reasonable basis you may suggest.

If any part of the foregoing is incorrect, please advise me. Otherwise, I trust that your client will reconsider his position and attempt to settle this matter by amicable means.

Finally, you have orally extended our time to appear or otherwise move with regard to the above-captioned complaint. In light of the foregoing, I would anticipate a response to be filed by us within thirty days from the date of this letter. If for any reason this is not satifactory to you, please notify the undersigned.

Thanking you for your courtesies in this matter, I am

Yours very truly,

RJZ:mg

Ralph J. Zola

5320

HOPKINS & GRESHAM
ATTORNEYS AT LAW
2850 THE NATIONAL BANK OF GEORGIA BUILDING
ATLANTA, GEORGIA 30303

H. LOWELL HOPKINS
THOMAS P. GRESHAM
ROBERT E. WHITLEY

AREA CODE 404
688-0033

February 24, 1972

Aaacon Auto Transport, Inc.
147 West 42nd Street
New York, New York 10036

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Attention: Mr. Ralph J. Zola

Re: B. F. Coggins vs. Aaacon Auto Transport, Inc.; Civil Action File No. 397352; Civil Court of Fulton County, State of Georgia

Dear Mr. Zola:

As we have discussed numerous times over the telephone, I filed suit in this case based upon the belief that the vehicle involved was a new vehicle. After my discussions with you and upon my further investigation, I have determined that the vehicle had approximately 9,354 miles on it when tendered to Aaacon Auto Transport. Also, I have learned that the vehicle was approximately 5 months old at the time it was tendered to Aaacon. In light of these facts and based upon my further discussion with United States Fidelity and Guaranty Company, I have been authorized by United States Fidelity and Guaranty Company to make demand of $3,775.00 as the fair market value of this vehicle. I am therefore, making formal demand upon Aaacon Auto Transport, Inc. of $3,775.00 as full settlement of this case.

I am aware, as you are, that there have been differences of opinion as to the value of this vehicle at the time it was tendered to Aaacon. Upon reviewing all of the facts of this case, I am of the opinion that our demand of $3,775.00 represents the fair market value of this vehicle. I believe this is a fair demand and I am hopeful that we can dispose of this case in the near future.

I look forward to hearing from you.

APPENDIX 1940

Yours very truly,

Robert E. Whitley

REW/lmw

BUSINESS-CUSTOMER RELATIONS RECORD
A Better Business Bureau Service To
Improve Business -- Customer Relations

BBB

BETTER BUSINESS BUREAU OF SOUTH FLORIDA, INC.
25 S.E. 2nd Ave. Suite 521
Miami, Florida 33131

4321

THE CUSTOMER: The Bureau does not represent either the business or the complainant [illegible] treatment for all concerned. To avoid delay in processing, furnish [illegible] plaint will be forwarded to the company for their evaluation and response.

YOU MUST RETURN ALL COPIES OF THIS FORM WITH COPIES OF BILLS, RECEIPTS, GUARANTEES, CONTRACTS, ETC.

ate of Transaction 11/20/70 Date You Complained to Company 12/28/70 To whom AAACon Auto

ame of Sales Person Mr Feldmen of Miami Account or Contract No.

Advertised, When Where (Enclose Ad, if Possible)

OMPANY AAACON Auto Transport - % Mr Maxwell
DDRESS 147 W. 42 St.
New York, New York
TY
STATE ZIP CODE

YOUR NAME Mrs. Carl Ferreira
ADDRESS 2173 N. E. 180 St.
North Miami Beach, Fla. 33162
CITY
STATE ZIP CODE

TATE YOUR EXPERIENCE BRIEFLY (Please Restrict Your Remarks to This Space).

On 11/20/70 I hired AAACon Auto. Transport Inc. to deliver a 67 Karmen Gia from L. A. Calf. to Miami. Paid the fee of 100.00 by check. Bal. due 50.00 upon arrival. In route the driver had a accident, he hit a door, and failed to report the accident. Arrived with the car on 12/24/70. E unmatley notified AAA Con here in Miami 10 N. E. 3rd Ave. Mr Feldman, he turned it over to AAA Con of N.Y.C. 147 W. 42nd St. They carry the Insurance to fix the car. We have been trying unsuccessfully since to have them fix our car. Inclosed you will find a letter I sent them and I have complyed with every thing they asked. Still no results. We would appericate any help you can give.

hat Adjustment (If Requested) Do You Consider Mutually Fair? $270.00, Est.

Mr Carl Ferreira 3/3/71
YOUR SIGNATURE DATE

CUSTOMER: DO NOT WRITE BELOW THIS LINE

TO THE COMPANY: Your customer has made this statement of experience and request for adjustment. The Bureau acts only as arbitrator and recorder. Your customer goodwill is our concern. No judgment is attempted until your answer is received. Please state your disposition of this case so that our files will reflect your comments and/or handling. Please return all copies to the Bureau. Your copy will be returned to you with our examiner's report.

☐ Have adjusted ☐ Will adjust by ☐ Unwilling to reconsider (explain below)

COMMENTS: According to our appraisers report, the fifty Dollars that was returned is enough to pay for the damage.

Date 3/16/71 By Bob Maxwell Title Claims.

BUREAU EXAMINER'S REPORT

REPORT CATEGORY

☐ ADJUSTED
☐ NOT ADJUSTED
☐ INSUFFICIENT INFORMATION
☐ COMPANY NOT LIABLE

Forwarded 3-3-71

APPENDIX 1941
By:

COMPLAINT COPY

4326

Mar 16, 1971

Consumer Protection Div
903 Justice 1st Bldg.
Miami, Fla. 33125

Complaint Res
7322 Ferreira
Pontes Car.

Gentlemen,

In reference to your request and complaint, please be advised that according to our appraisers, the fifty dollars retained by Mr Ferreira, is enough to pay for the damages

Very truly yours,
Ri Maxwell

Exhibit 328

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 · (212) LO 3-2222

April 13, 1971

Mr. Carl Ferreira
2173 Northeast 180th Street
North Miami Beach, Florida

Dear Mr. Ferreira:

I am in receipt of a copy of your letter to the Interstate Commerce Commission. As you may be aware, we have received from you photographs of the damage as well as the evidence and you have submitted these to the adjustor who indicated that the damage which may have been caused by our driver does not exceed that part of the tariff which you have obtained.

You may not be aware from our correspondence of March 16, 1971 of the fact that the car was extremely damaged when received by us in San Gabriel, California and that the left panel and the left front fender were dented and straightened prior to pick up.

We must therefore respectfully decline to make any further payment on your claim.

Very truly yours,

Ralph J. Zola

RJZ:et

cc: Mr. Stephen Tomany

APPENDIX 1942 A

E 1328

AAACON AUTO TRANSPORT, INC.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

April 13, 1971

Mr. Carl Ferreira
2173 Northeast 180th Street
North Miami Beach, Florida

Dear Mr. Ferreira:

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We must therefore respectfully decline to make any further payment on your claim.

Very truly yours,

Ralph J. Zola

RJZ:et

cc: Mr. Stephen Tomany

APPENDIX 1942 B

4331

FIRST NATIONAL BANK OF HOLLYWOOD
HOLLYWOOD, FLORIDA 33022

March 10, 1972

Ralph J. Zola
Executive Vice President
Aaacon Auto Transport, Inc.
147 West 42nd St.
New York, New York 10036

Re: Mrs. Carl Ferreira
Repossession - Glenn Pontes

Dear Mr. Zola:

As stated to you in our telephone conversation the first of the week, if there is a condition report available, it is in Mrs. Ferreira's possession.

At the time of repossession, Mrs. Ferreira asked that we contact an auto adjustor. We at that time assigned the account of Glenn Pontes to Young Auto Adjustors, Inc. in California. Young Auto Adjustors, Inc. were to send a condition report directly to Mrs. Ferreira. My suggestion would be to contact her. I have been unable to reach her.

Since Mrs. Ferreira actually paid for repossession and transportation of said vehicle, we only acted as intermediate and kept no record of a condition report.

If I can be of any further assistance, please contact me.

Very truly yours,

R. L. Forbes
Assistant Cashier

RLF/dm

APPENDIX 1943

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

4 331

April 5, 1971

Mrs. Myrtis Fauntleroy
5470 S. W. 76th Street
Miami, Florida 33143

Dear Mrs. Fauntleroy:

Your letter to the Interstate Commerce Commission has been forwarded to me for reply.

First of all, it goes without saying that I apologize for the inconvenience you experienced and any rudeness on the part of our company employee. Knowing Mr. Evans personally, as I do, I find it very hard to believe that he would be rude to you. Even if your complaint of rudeness was no more than a misunderstanding, it is with regret that we note your dissatisfaction.

I have read your letter and wish to make the following observations thereof. Pursuant to our tariff rule 2-E, the car owner is supposed to provide a full tank of gas at the starting point. Moreover, pursuant to rule 7-A of the tariff charges that repairs are to be paid for by the owner, prior to the relinquishment of the vehicle.

Turning to the other matters, it is true that the New York police will not accept a stolen car report from anyone except the registered owner of the vehicle.

I understand that there are outstanding tariff charges in the amount of $54, which you have offset against the $50 of expense you incurred in refurbishing the vehicle.

In light of the above, I consider the file in this matter closed. You may be assured that the driver's conduct has duly noted and that appropriate action against him will be taken.

Yours very truly,

AAACON AUTO TRANSPORT INC.

Ralph J. Zola
Executive Vice President

RJZ:rk
cc: Mr. Stephen P. Tomany

5/332

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

December 21, 1971

Mrs. Myrtis Fauntleroy
5470 S. W. 76 Street
Miami, Florida 33143

Dear Mrs. Fauntleroy:

I am in receipt of a copy of your letter to the American Fidelity Insurance Company dated December 15, 1971.

As I mentioned to you in my letter of November 5, we would like to review your case thoroughly, and in this regard, we would appreciate your forwarding to us the following, so that we may have all the facts in the processing of your claim:

1. A copy of the Bill of Lading which you received.

2. The bill from Sears for the work done prior to the transportation of your vehicle.

3. Bill for the battery put in your car in November of 1970.

4. The repair estimate of the body work to your vehicle.

5. Any rental bills for substitute transportation during the time you were without a car.

Would you also please inform me if any personal property was taken from the vehicle, or whether the driver, to your knowledge, engaged in the theft of any articles belonging to you.

Thanking you for your prompt reply, I am

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice President

RJZ:mg

APPENDIX 1945

cc: American Fidelity Insurance,
485 Old Country Road
Westbury, L.I., N.Y. 11590

AAACON AUTO TRANSPORT, INC.
147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

5/333

January 4, 1972

Certified Mail
Return Receipt Requested

Mrs. Myrtis Fauntleroy
5470 S. W. 76 Street
Miami, Florida 33143

Dear Mrs. Fauntleroy:

Enclosed is a copy of my letter to you of December 21, to which I have not received your reply.

I would appreciate receiving a reply at your earliest convenience.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice President

RJZ:mg
Enc.

APPENDIX 1946

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO
MYRTIS FAUNTLEROY
STREET AND NO.
5470 S. W. 76 STREET
P.O., STATE AND ZIP CODE
MIAMI, FLORIDA 33143

POSTMARK OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date, and where delivered	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (2 pounds or less)		45¢

POD Form 3800
July 1969

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

GPO 1970 0-397-458

5335

PORT, INC.
. 10036 • (212) LO 3-2222

March 1, 1972

Certified Mail
Return Receipt Requested

Mrs. Myrtis Fauntleroy
5470 S. W. 76 Street
Miami, Florida 33143

Dear Mrs. Fauntleroy:

With regard to your letter of January 11, 1972, I was wondering, have you received a response from the garage you wrote to concerning the type of battery they had installed in your vehicle, so that we may know if there is any substantiation to your suspicions concerning the replacement of the battery by the driver?

Finally, do you have any written indication showing the mileage on your odometer at the start of the transportation of your vehicle by Aaacon, and when the car was delivered to you?

The reason I am asking this is that there does not appear to be such an indication of the mileage on any of the documents you have submitted to us, including the Sears Roebuck bills, and there appears to be some discrepancy in your assertions as to the amount of mileage on the car by the driver.

Anticipating your prompt reply, I am

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice President

RJZ:mg

APPENDIX 1947

5/339

MOBILE ACCIDENT REPORT

complete in detail, giving direction of
stimated speed of each and statements
y parties immediately after accident

PROTECT YOUR LICENSE

Complete and Return to
Aaxcon office of origin
in envelope provided.

YOUR VEHICLE—No. 1

NAME OF OWNER OF CAR: IRVING LEVINE
BILL OF LADING #
NAME OF DRIVER: DANIEL HURLEY
AGE: 22
BUSINESS PHONE NO. ( )
HOME PHONE NO. (201) 795-5404
STREET ADDRESS: 715 PARK AVE
CITY: HOBOKEN N.J.
ZONE
STATE: N.J.
MAKE, YEAR, MODEL: 1966 Buick Hardtop
LICENSE NUMBER: LUG5137
STATE: New Jersey
DESCRIBE DAMAGE: Scrapes to Body - Dents (roof)
Right Front Headlamp out / Smashed windshield
ESTIMATED REPAIR COST
WHERE MAY CAR BE SEEN?
STREET ADDRESS
PHONE NO. ( )
CITY
ZONE
STATE

WERE POLICE NOTIFIED? ☒ YES ☐ NO
NAME OF POLICE DEPARTM
CITY/TOWN POLICE ( )
STATE HIGHWAY PATROL (X) N. C.
TURNPIKE POLICE ( )
SHERIFF'S OFFICE ( )
OFFICER'S NAME: LATTA
BADGE NO.
WAS EITHER DRIVER CITED (NO) # 1 ( ) # 2
POLICE OR OFFICR'S ACCIDENT NO.

DATE OF ACCIDENT: 21 Aug 71
TIME: 7 AM PM
PLACE OF ACCIDENT: End of 95 H.W (see back)
STATE: N C
CITY: Rocky Mount
COUNTRY: U S A
(STREET OR HIGHWAY ROUTE OR NAME): U.S. H.W 95-End
☒ AT ☐ NEAR (Intersecting street or highway, house number bridge railroad crossing, or other landmark): Beginning of 301 / End of 95 (see back)

CONTRIBUTING CAUSES OF ACCIDENT:
VEHICLE DEFECTS. ☐ TIRES ☐ BRAKES ☐ STEERING. ☐ LIGHTS. ☐ ENGINE. ☐ WHEEL OR PAR
WEATHER. ☐ RAIN ☐ SNOW. ☐ FOG. ☐ SLEET.
ROADWAY. ☐ ICY. ☐ OILY. ☐ WET. ☐ SNOWY. ☐ MUDDY
☐ OTHER

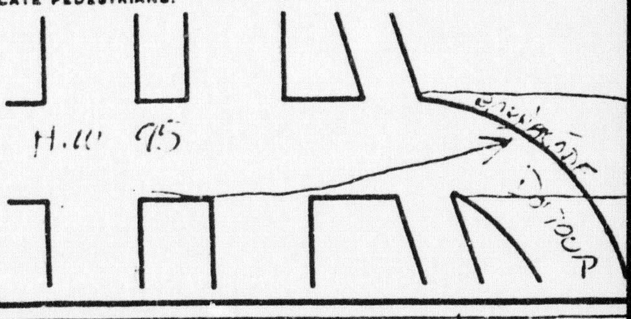
OTHER CAR VEHICLE—No. 2

DESCRIBE DAMAGE (IF ANY) TO OTHER CAR: No Other CAR
MAKE, YEAR, MODEL, LICENSE NUMBER
STATE
DRIVER'S NAME AND ADDRESS
LICENSE NUMBER
STATE
CITY
ZONE
STATE
OWNER'S NAME AND ADDRESS
PHONE NO. ( )
CITY
ZONE
STATE

DESCRIPTION OF ACCIDENT

I had just finished changing a defective tire. Pulling back onto highway, I turned to see traffic in rear and went through wood barricade which was closing off normal thorough fare.

USE PORTION OF DIAGRAM WHICH BEST ILLUSTRATES PLACE WHER ACCIDENT OCCURRED. FILL IN NAME OF STREETS. INDICATE POSITIO AND DIRECTION OF TRAVEL → OF EACH CAR. USE "X" TO IND CATE PEDESTRIANS.



INJURED

IN YOUR CAR	IN OTHER CAR	PEDESTRIAN	NAME AND ADDRESS	APPARENT AGE	NATURE OF INJURIES	AREA CODE	PHONE NO.
			NONE				
						( )	

APPENDIX 94.8

If more than one other vehicle was involved, or you can obtain the Names, Addresses and phone numbers of any witnesses, List same on the reverse side of this report

Daniel (C) Hurley
SIGNATURE

MacElee is damaged. No estimate immediately available.

2. Accident occurred at beginning of Connection Road, (rural paved road # 1522), between I-95 and U.S. 301, at approx 2:15 AM.

BEST COPY AVAILABLE

4340

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 · (212) LO 3-2222

Sept 27, 1971

W.W.

Interstate Motor Carriers Agency
280 Broadway
New York, New York 10007

Refer to our Claim # ______

Gentlemen:

We are enclosing the attached documents to fulfill the notice provision of our liability policy only.

Registered Owner: Levine Irving

Our Bill of Lading No. G 1650

These are a first submission (✓)

These are further to our mailing of:

Very truly yours,

Bob Maxwell

Claims Department

Documents enclosed:

(✓) Original Freight Bill

(✓) Bill of Lading

(✓) Accident Report Police Driver

( ) Damage Estimate (s)

( ) Other: Letter from 3 party, N.C. State Hyway Comm

APPENDIX 1950

5/341

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 5-2222

Nov. 23, 1971

Interstate Motor Carriers Agency
280 Broadway
New York, New York 10007

Refer to our Claim # ________

Gentlemen:

We are enclosing the attached documents to fulfill the notice provision of our liability policy only.

Registered Owner: Louise Irving

Our Bill of Lading No. [illegible]

These are a first submission ( )

✓ These are further to our mailing of:

Very truly yours,

Bob [illegible]

Claims Department

Documents enclosed:

( ) Original Freight Bill

( ) Bill of Lading

( ) Accident Report

( ) Damage Estimate (s)

( ) Other: Letter from 3 Party

Date of Acc 8/24/7

5/34½

Aaacon Auto Transport, Inc.
147 WEST FORTY-SECOND STREET, NEW YORK, N.Y. 10036 • (212) LO 3-2222

June 4, 1972

Interstate Motor Carriers Agency
280 Broadway
New York, New York 10007

Refer to our Claim # ________

Gentlemen:

We are enclosing the attached documents to fulfill the notice provision of our liability policy only.

Registered Owner: Levine Irving

Our Bill of Lading No. A1650

These are a first submission ( )

[✓] These are further to our mailing of:

Very truly yours,

Bob Mulvell

Claims Department

Documents enclosed:

( ) Original Freight Bill

( ) Bill of Lading

( ) Accident Report

( ) Damage Estimate (s)

( ) Other: Tellefson Report

Date of acc. 5/31/72

4347

Interstate Commerce Commission
BUREAU OF OPERATIONS
Washington, D.C. 20423

October 28, 1971

IN REPLY REFER TO: K-715
Docket No. MC-125808

Mr. Irving Levine
Bertman & Levine, Esqs.
945 Manhattan Avenue
Brooklyn, NY 11222

Re: AAACON Auto Transport, Inc.
147 West 42nd Street
New York, NY

Dear Mr. Levine:

Thank you for your recent letter. I regret I must advise that the Interstate Commerce Commission does not have jurisdiction to settle loss or damage claims in individual situations. As of now, if the parties fail to reach a settlement, the only recourse is to file a suit in a court having appropriate jurisdiction as in other contractual affairs where there is a disagreement between parties.

In order to be of some assistance to people who have problems in this area, the Commission does require that motor carriers furnish security to the public against their cargo liability. In this connection, American Fidelity Fire Insurance Company, 435 Old Country Road, Westbury, Long Island, NY 11590 has certified insurance for this motor carrier under File No. 30 476-919306, effective from and after July 28, 1967. You may file your claim directly with this insurance company which is liable for any loss or damage for which the carrier may be held legally liable. Upon filing said claim, the insurance company should be advised that it is being presented under its certificate of insurance filed with the Interstate Commerce Commission.

Very truly yours,

L. J. Schloer, Chief
Section of Insurance

cc: AAACON Auto Transport, Inc.
jp

STATE OF NEW YORK) ss:
COUNTY OF KINGS)

BERT LEVINE, being duly sworn, deposes and says:

1. I am the attorney for IRVING LEVINE, the plaintiff in the matter of IRVING LEVINE vs. AAACON AUTO TRANSPORT, INC., and I am fully familiar with the facts and circumstances surrounding the claim in question.

2. On the 2nd day of February, 1972, I was present at the office of AAACON AUTO TRANSPORT, INC. at 147 West 42nd Street, New York, N. Y.

3. At that time and place, there was made available to me the file concerning the claim of Mr. Irving Levine and the investigation work done therein by Aaacon Auto Transport, Inc. In this regard, I read and reviewed the Accident Report submitted to Aaacon Auto Transport, Inc. by the driver, Mr. Daniel W. Hurley. The report confirms what Mr. Hurley had stated to me in a prior telephone conversation, to wit, that he informed Aaacon Auto Transport, Inc. that the damage to the vehicle occurred in connection with his changing a defective tire on the car of Irving Levine, and returning to the road therewith, AFTer changing said Tire.

4. I also reviewed the documentation contained in the file which showed that a request for a Police Report was made by Aaacon Auto Transport, Inc. on August 23, 1971, which said Police Report was received by Aaacon Auto Transport, Inc. on September 27, 1971. After the date on which Aaacon Auto Transport, Inc. received the Police Report, Aaacon Auto Transport, Inc. first offered Irving Levine a monetary settlement for the vehicle belonging to said Irving Levine.

Bert Levine

Sworn to before me this
10 day of February, 1972.

E1348

AAACON AUTO TRANSPORT INC.

NEW YORK - LO 3-2222 147 West 42nd St.
CHICAGO - HA 7-0026 202 South State St.
PITTSBURGH - 471-5144 717 Liberty Ave.
PALM BEACH - 833-1671 120 S. Olive St.
ST. LOUIS - CE 1-7535 511 Locust St.
PHOENIX - 264-0201 222 West Osborn Rd.
BOSTON - KE 6-0120 230 Boylston St.
CLEVELAND - 731-6263 1857 E. 17 St.
DENVER - 825-9191 1270 S. Santa Fe Dr.
PHILADELPHIA - LO 4-4326 1612 Market St.

NEW YORK
147 WEST 42 ST.
LO 3-2222

LOS ANGELES - MA 4-6644 707 S. Broadway
ATLANTA - 523-7644 175 Peachtree N.E.
SAN DIEGO - 234-6511 235 Broadway
SAN FRANCISCO - 431-0664 1095 Market St.
ST. PETERSBERG - 896-4634 2422 Central Ave.
DALLAS - RI 2-4271 912 Commerce St.
FT. LAUDERDALE - 525-0491 200 E. Broward
SEATTLE - MU 2-2277 1901 3rd Ave.
MIAMI - 358-1226 10 N.E. 3rd Ave.
KANSAS CITY - HA 1-1300 1005 Grand Ave.

BONDED and INSURED AUTOMOBILE TRANSPORTERS • OFFICES IN OVER 100 MAJOR CITIES U.S.A.

RAZE, EMILY

FREIGHT BILL—ORDER FORM

Kindly Fill Information Below — Sign and Mail This Copy to Us Immediately

6515

EGISTERED AR OWNER Emily Raze
EGISTERED TREET ADDRESS 413-B Passaic St.
EGISTERED ITY & STATE Hackensack N.J. TELEPHONE NUMBER Sister-Selma Sabel 914-BE 7-1666

AR MAKE YEAR	Ford '66	TYPE	Mustang	MODEL DOORS	2
ICENSE UMBER	FTV 198	STATE	New Jersey	ENGINE OR SERIAL #	19449
OWER RAKES	yes	POWER STEERING	yes	AUTOMATIC TRANSMISSION	yes
ADIO	yes	HEATER	yes	SPARE TIRE	yes
ONDITION F TIRES	Excellent	AIR CONDITION	yes	COLOR	white

AR OWNERS NSURANCE CO. Allstate INSURANCE POLICY# 9 [illegible] 468

THE CAR OWNER AGREES TO P AC ALL LUGGAGE IN THE CAR ONLY. LUGGAGE LIST:

Possible Sm. Packages bet. tires —

ICK UP DATE Jan. 27, 1970 PICK UP CAR FROM — LL
AME Miss Selma E. Sabel
AR WILL BE LOCATED T — STREET ADDRESS 801 Bronxville Rd Apt. J-6
ITY & TATE Bronxville, New York PHONE NUMBER 914-237-1666

DELIVER CAR TO —

AME Alan Tallis or Emily Raze Apt. B-113
STREET ADDRESS 9854 N. Kendall Drive (Nob Hill Apts)
CITY & STATE Miami Fla. PHONE NUMBER 305 944-6478

TOTAL PRICE $129.00 AS FOLLOWS ($79.00 WITH THIS ORDER — BALANCE OF $50.00
N CASH TO DRIVER AT DESTINATION
PAID

SUBJECT TO THE TERMS AND CONDITIONS OF CARRIER'S BILL OF LADING

APPENDIX 1955

SIGNED BY CAR OWNER (SHIPPER) OR HIS AGENT X

FM 1/27/70 SW	BM 2/1/70 ST	CL 2/1/70 ST

5/3/70

April 22, 1969

Norman A. Share
Attorney at Law
38 N. W. 8th Street - Suite #3
Homestead, Florida 33030

Dear Judge Share:

Your letter to my client, Aaacon Auto Transport Inc., has been forwarded to me for reply.

I would appreciate receiving from you, without prejudice to either party of course, any list of possessions that your client submitted prior to, or contemporaneously with, the transportation of her vehicle.

Furthermore, my client is awaiting a proof of loss from Allstate Insurance Company.

Very truly yours,

Ralph J. Zola

RJZ:cd

Exhibit 351

ALLSTATE

March 3, 1970

District Service Office
5950 Sunset Drive
Miami, Florida 33143
Phone: Area Code 305 666-2141

Re: Claim # G41B81475

ze
Mrs. Emily Raye
9854 North Kendall Drive
Miami, Florida

Dear Mrs. Raye:

We are enclosing our draft in the amount of $28.86 to cover the four hub caps missing from your vehicle.

We have made an inspection of your engine at the shop in West Palm Beach. The damage is a result of mechanical breakdown and excluded under your policy.

Very truly yours,

Lola Haft
Claim Examiner

LH/lsm
Enclosure

APPENDIX 1956A

4357

March 3, 1970

District Service Office
5950 Sunset Drive
Miami, Florida 33143
Phone: Area Code 305 666-2141

Re: Claim # C40121475

Mrs. Emily Haze
9850 North Kendall Drive
Miami, Florida

Dear Mrs. Haze:

We are enclosing our draft in the amount of $48.86 to cover the four hub caps missing from your vehicle.

We have made an inspection of your engine at the shop in [illegible] Beach. The damage is a result of mechanical breakdown and excluded under your policy.

Very truly yours,

Lela Haft

Lela Haft
Claim Examiner

LH/lsm
Enclosure

APPENDIX 1956 B

E/35L

Allstate

District Service Office
5950 Sunset Drive
Miami, Florida 33143
Phone: Area Code 305 666-2141

December 28,1971

Re: Emily Raze

Mr. Ralph J. Zola
AAACon Auto Transport,Inc.
147 W 42nd.Street
New York,New York

Gentlemen:

We are enclosing a copy of the statement of the Body Shop owner who made the inspection of the 1966 Mustang,property of Emily Raze.

Very truly yours,

Lola A Haft

Lola A. Haft
Claim Examiner

LAH:kdk
Enc.

February 16, 1970

My name is Barry Edwards and I am the owner of Barrys Auto Repair on So. Blvd in W. Palm Beach. A week ago Saturday nite we towed in a 66 Mustang from the Florida turnpike. I tore the engine down and found four broken pistons, scored cylinder walls and other indications that the engine was run without water. The water pump was leaking and I feel that this leaking water pump was the cause of the engine losing it water. I replaced the engine with a used one and have delivered the car to the owner at my place of business. Emily Raze is the owner of this car.

Barry Edwards

APPENDIX 1958

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
____________________________________X

AAACON AUTO TRANSPORT, INC.,
Plaintiff,

Index No. 805-1972

-against-

INTERROGATORIES

NEIL NAVES and JOSEPH S. LA FRAZIA,
Defendants
____________________________________X

IT IS HEREBY STIPULATED by and between the parties hereto that the apperance of JOSEPH S. La FRAZIA and the questions and answers hereinafter set forth are in lieu of discovery proceedings in the above captioned matter.

IT IS FURTHER STIPULATED that the parties accept the notarization by MICHAEL G. AMES, a member of the firm of ZOLA and ZOLA, and the parties waive the filing of these interrogatories.

Zola & Zola

Campbell, Hyman & Lang

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS;

JOSEPH S. LaFRAZIA, JR., having been duly sworn, testifies as follows:

Q. Mr. La Frazia, is it true that the repair garage in San Francisco originally requested $500 to $600 to replace the allegedly damaged parts in the vehicle in question?

A. Yes.

Q. Is it also true that you did not have sufficient funds to replace these heavy duty parts?

A. Yes.

Q. Is it also correct that your father refused to forward the money to pay for these heavy duty parts?

A. Yes.

Q. Did you then arrange for the replacement with stock parts of a lesser cost, in the area of approximately $250?

A. Yes.

Q. Is it true that subsequently the repair facility in California road-tested the vehicle and found that they had not properly examined the "headers" in question, and that the cost of that repair was an additional $100?

A. Yes.

Q. I show you a letter dated January 12, 1970, addressed to Joseph S. La Frazia, with a copy to Albert F. Campbell, Esq., and ask you if you ever received that letter.

A. Yes.

(Letter annexed and marked as Plaintiff's Exhibit No.1.)

Q. To the best of your knowledge, the tires on the vehicle were blue-streak Goodyear tires?

A. Yes.

Q. Mr. La Frazia, I show you a document and ask if it represents a description given to you by your cousin as to certain parts of the vehicle.

A. Yes.

(Annexed as plaintiff's Exhibit #2)

Q. Mr. La Frazia, I show you a copy of a straight bill of lading short form original, and ask you if it represents the bill of lading for the transportation of your car by rail from San Francisco to Staten Island.

A. Yes.

(Annexed as plaintiff's Exhibit 3).

Q. I show you a bill from Corvette Enterprises and ask you if that represents the cost of the original repair authorized by you.

A. Yes.

(Annexed as plaintiff's Exhibit #4).

Q. Mr. La Frazia, did the vehicle in question have on it oversized tires described as Goodyear blue-streak?

A. Yes.

Q. And did the car contain 8" wide steel rims?

A. Yes.

Q. Are these blue-streak tires the ones you referred to in your testimony before the Interstate Commerce Commission as "blue dot" tires?

A. Yes.

Q. Mr. La Frazia, is it true that the tires did not have inner tubes?

A. Yes.

Q. Mr. La Frazia, after the car was returned to you in New York City, was it stored until your return from service overseas?

A. Yes.

Q. In October, 1970, upon your return from overseas, did you drive the car for approximately four months?

A. Yes.

Q. And thereafter, did you sell the car in approximately January of 1971?

A. Yes.

Q. And the car was in storage from the time it arrived in New York until you returned from overseas?

A. Yes.

INTERROGATORIES OF MR. JOSEPH LA FRAZIA, SR.

Q. Mr. La Frazia, I show you a letter marked plaintiff's Exhibit #5, and ask if it is the original of plaintiff's Exhibit #1.

A. Yes.

Q. And does the handwriting at the lower middle left side represent your handwriting?

A. Yes.

Q. And does it indicate a kind of tire that was subsequently purchased by you upon the return of the vehicle to New York?

A. Yes.

Q. Can you tell me how many of these tires you purchased upon the return of the vehicle to New York?

A. We purchased four.

The foregoing is true and correct.

Joseph S. La Frazia, Jr.

Joseph La Frazia, Sr.

Sworn to before me this
28th day of February, 1972.

MICHAEL G. AMES
Notary Public, State of New York
No. 31-0060695
alified In New York County
Expires March 30, 1978

ZOLA AND ZOLA
COUNSELLORS AT LAW
1472 BROADWAY
NEW YORK, NEW YORK 10036

TELEPHONE
(212) OXFORD 5-4788

PAUL A. ZOLA
RALPH J. ZOLA

January 12, 1970

Joseph S. Lafrazia
71 Howard Parkway
New Rochelle, N.Y.

Dear Mr. Lafrazia:

My client, Aaacon Auto Transport, Inc. has contacted me regarding the car belonging to Neil Naves of Torrance, California.

Please be advised that my client informed me that the car in question has tires which are not safe for driving and that you have been informed of this but to date, you have not made any arrangements for the replacement of the tires and proper wheels.

My client will be happy to turn the car over to any agent of yours or to deliver the car locally to anyone you select. Alternatively, if you wish to replace the tires or wheels and make the car ready for the trip, it shall be happy to transport the car to New Rochelle, New York.

Please advise me as to your wishes inasmuch as the car is being stored in the interim at your wish and expense.

Very truly yours,

Ralph J. Zola

RJZ:jk

cc Albert F. Campbell, Esq.

APPENDIX 1963

Pl Ex #1

216 1875

1967 Corvette Softop

427 Cubic inch 435 HP before Modifications

Engine

HD Block w/4 Bolt Mains, Hardened crank journals, HD oil pump.

1. Manfare 4 carbs setup (complete including air cleaners, smog-device, ball bearing lindage, fuel block, modified carbs and manifold. $210
2. AIR ported heads including undercut, swirl polished racing valves (TRW) with hard chrome stems & tool steel tips, double valve springs with Alum, retainers and floating dampeners, perfect circle valve inlet manifold and exhaust headers matched to heads, combustion chambers cc'ed. $120
3. Iskenderian cam., GM pushrods, and rockers $60.
4. Pan and int. manifold oil windage trays. $25
5. Tailored centrifica 1 advance curve (no vacume.) $25
6. 42 degree advanced curve to #5. Packard 440 steel core wiring, Raja terminals, Champion N-66y racing plugs, Delco breakerless distributer, transistorized primary.
7. Traco headers and side mounts (36" long, 2" dia. primary tubes side mounted, 3½" dia. secondaries with matching 3½" dia, collecters-side mounted. $150
8. Wilcap forged alum, flywheel (141 lbs.) GM HD11"dia. clutch. $150

7 [illegible] $40

Chassis

1. Four Goodyear 5.50 x [illegible].75 x 15 Blue streak wet & dry. $210
2. Four 8" wide steel rims. $65
3. HD front springs cut to lower front of car 1". $20
4. Extended rear bolts to lower rear of car 1½".
5. Traction Master fuel competition 50/50 shocks. $100
6. Ridgid mounted front and rear stabilizer bars.
7. 5/8" dia. rear stabilizer bar.
8. Front and rear wheel alignment (setup for racing.) $30
9. Steering and short linkage set for short throw.
10. 4,11:1 rear axle gears.

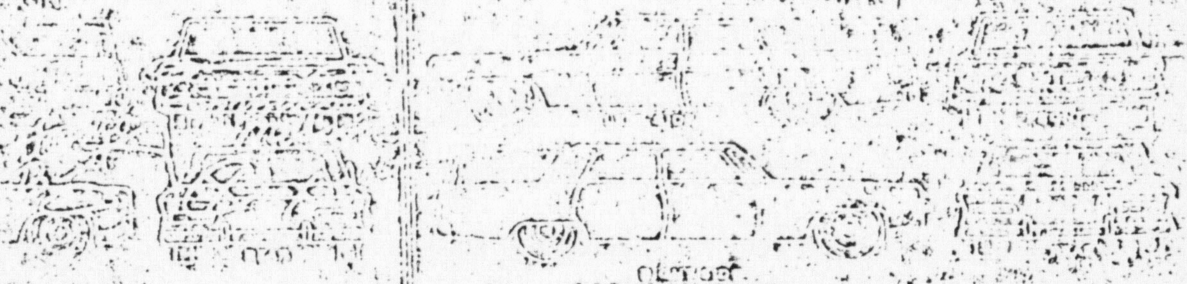
Body

1. Wheel wells flared and opened to full radio for tire clearance and fiberglassed and repainted. $150
2. Functional hood scoop.
3. Front bumper removed, license plate relocated and holes fiber-glassed and repainted.
4. Luggage rack and ski rack adapters installed. $75
5. Top replaced.
6. Miscellaneous (wax, lantern, flares, burglar alarm, etc.) $50

Pl Ex #2

APPENDIX 1964

[illegible]



FRONT RADIO

AIR COND.

[illegible]

APPENDIX 1965

Corvette ENTERPRISES

84 PAGE ST.
SAN FRANCISCO, CALIF. 94102
851-2233

NAME TEERY SPRAGUE
NEIL NAMES 992
ADDRESS 2525 W 190TH ST
CITY TORRANCE , CALIF.

DATE	CUST. ORDER NO.	WHEN PROMISED	PHONE
12-13-69			

YEAR & MAKE OF CAR-TYPE OR MODEL	SERIAL NO. / MOTOR NO.
67 CORVETTE CONV	

LICENSE NO.	MILEAGE	WRITTEN BY
VG2-684	34072	R

AMT.	PART NO.	NAME OF PART	SALE AMT.
1	[illegible]		
1	[illegible]		
1	[illegible]		
1	PERF BEARING		8 00
1	SET LOCKING STRAPS		2 00
			[illegible]
1	STOCK DIA PLATE		42 00
1	" DISC		
1	FLYWHEEL		32 00
1	DISC		26 00
			110 00

SEE BACK FOR ADDITIONAL PARTS — TOTAL PARTS ► 110.00

ACCESSORIES – TIRES AND TUBES

TOTAL ACCESSORIES ►

ESTIMATES ARE FOR LABOR ONLY, MATERIAL ADDITIONAL

DESCRIPTION OF WORK	AMOUNT
R + R CLUTCH + FLYWHEEL ASSY (SATURDAY)	130 00
REPAIR HEADDERS	20 00
~~Total Est~~	

265.50
15.50
DISCOUNT
250.00

GAS, OIL & GREASE		CHECK BELOW			
GALS. GAS		LUBRICATE		LABOR ONLY	150 00
QTS. OIL		CHANGE ENGINE OIL		PARTS	110 00
LBS. GREASE		TRANSMISSION		ACCESSORIES	
		DIFFERENTIAL		GAS, OIL & GREASE	
		WASH		MISC. MERCHANDISE	
		POLISH		SUBLET REPAIRS	
TOTAL GAS, OIL & GREASE ►		TOTAL SERVICE ►		TAX	5 50
AUTHORIZED BY X Terry Sprague				TOTAL ►	265 50

PAY THIS AMOUNT ⇧

I HEREBY AUTHORIZE THE ABOVE REPAIR WORK TO BE DONE ALONG WITH NECESSARY MATERIALS. YOU AND YOUR EMPLOYEES MAY OPERATE ABOVE VEHICLE FOR PURPOSES OF TESTING, INSPECTION OR DELIVERY AT MY RISK. AN EXPRESS MECHANIC'S LIEN IS ACKNOWLEDGED ON ABOVE VEHICLE TO SECURE THE AMOUNT OF REPAIRS THERETO. IT IS UNDERSTOOD THAT THIS COMPANY ASSUMES NO RESPONSIBILITY FOR LOSS OR DAMAGE BY THEFT OR FIRE TO VEHICLES PLACED WITH THEM FOR STORAGE, SALE, REPAIR OR WHILE ROAD TESTING.

P.Y.F. [illegible]

APPENDIX 1966

ZOLA AND ZOLA
COUNSELLORS AT LAW
1472 BROADWAY
NEW YORK, NEW YORK 10036

UL A. ZOLA
LPH J. ZOLA

TELEPHONE
(212) OXFORD 5-4788

January 12, 1970

Joseph S. Lafrazia
71 Howard Parkway
New Rochelle, N.Y.

Dear Mr. Lafrazia:

My client, Aaacon Auto Transport, Inc. has contacted me regarding the car belonging to Neil Naves of Torrance, California.

Please be advised that my client informed me that the car in question has tires which are not safe for driving and that you have been informed of this but to date, you have not made any arrangements for the replacement of the tires and proper wheels.

My client will be happy to turn the car over to any agent of yours or to deliver the car locally to anyone you select. Alternatively, if you wish to replace the tires or wheels and make the car ready for the trip, it shall be happy to transport the car to New Rochelle, New York.

Please advise me as to your wishes inasmuch as the car is being stored in the interim at your wish and expense.

Very truly yours,

Ralph J. Zola

Ralph J. Zola

WIDE TIRE
0 - 15 GOODYEAR

RJZ:jk

cc Albert F. Campbell, Esq.

PL Ex #5

Pl Ex #5

Dec. 22, 1964

Dear Augie,

Here is a list of parts that were on the car when it left L.A. including the prices:

1	Amco Luggage rack	$ 50.00
1	" Ski rack	23.00
1	Front bumper assembly	see attached bills
1	Standard Exhaust system	
1	Air Injector Reactor (Smog) system	
	TOTAL	

in box on luggage rack

APPENDIX 1968

The luggage rack and ski rack were new in May, 1968. The other parts were new in January, 1967.

Letter received by Joseph La Frozia Sr. from Neil Nawes

Joseph La Frozia

Sworn to before me this
28th of Feby, 1972
Michael G. Ames

MICHAEL G. AMES
Notary Public, State of New York
No. 31-0060605
Qualified in New York County
Commission Expires March 30, 1973

4360

AAACON AUTO TRANSPORT, INC.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3-2222

October 29, 1971

Mr. Joseph Di Giacomo
Claim Manager
The American Plan Corporation
American Plan Building
Westbury, N. Y. 11590

Re: Policy: 30-077-919318
Owner: J. LaFrazia
Loss: 12-13-69

Dear Joe:

I have received your letter in the above-captioned matter. Please note that this claim has been in litigation since May of 1970.

I believe that a review of the facts will support the position of our company. Briefly stated, they are as follows: We received an order for a 1967 Corvette in our New York office. The car was to be shipped from California to New York. The order was taken and a driver was assigned to the car, who picked it up. Unbeknownst to us, the car was a racing car and had on it racing tires (which are for all intents and purposes devoid of tread), a special engine and a low slung underbody. The car did not "blow up" at any time. Instead, the driver encountered engine difficulties which were repaired and paid for by the consignee, Joseph LaFrazia. Further investigation also revealed that, after the car had been repaired, the consignee was informed by the garage that the car was in need of further repairs because of the delicate nature of its engine. These repairs were also made.

We were about to reship the vehicle after repair when our San Francisco office notified us that because of the condition of the tires the car was unsafe to drive. There followed a series of phone calls in which we attempted to have the LaFrazias replace the tires with ordinary car tires. They refused to do so, despite numerous requests from our claims department and from me personally. Their idea was for us to pay for the replacement of the tires, which we declined. The consignee then decided to transport the car by rail to New York.

The car was never in an accident, and we have never received even one iota of evidence that the driver did anything wrong with the vehicle. We therefore have respectfully declined the claim.

Mr. Joseph Di Giacomo
The American Plan Corporation

October 29, 1971

I might add that the LaFrazias were not in possession of the vehicle when we picked it up. Rather, the person in possession was a Mr. Naves, Mr. LaFrazia's cousin, who had been using the car for his own purposes for a long period of time prior to pick-up.

Please feel free to call upon me if you have any further questions concerning this or any other matter.

Very truly yours,

AAACON AUTO TRANSPORT, INC.

Ralph J. Zola
Executive Vice President

RJZ:mg

4/364

re dates back to
4/86

Aug 23, 1971

State Hyway Patrol
Raleigh, N.C.

Daniel Hurley
Irving Levine

None
8/20/1971 or 8/21/1971
Rocky mount, N.C.

APPENDIX 1972

4375

SPECIAL INSTRUCTIONS: ____

____

____

THE GAS TANK IS TO BE FULL AT TIME OF PICK-UP FROM YOU. IF NOT DRIVER WILL FILL THE TANK AND PRESENT RECEIPT UPON DELIVERY.

OWNER & AUTO DRIVEAWAY AGREE TO THE FOLLOWING:

1. Driver is authorized by Owner to operate the automobile between its pick-up location and the destination set forth on this Shipping Order and Freight Bill, and to deliver the car to Owner at the specified destination. Driveaway will not be responsible for any excess mileage. Owner agrees that Driver may be accompanied by other persons while transporting automobile.

2. Driveaway agrees to transport your car as promptly as possible in accordance with your instructions but cannot guarantee pick-up or delivery on a specified date unless expedited service is engaged at expedited service rates. Driveaway does not agree to pay for your rental of an automobile nor shall it be liable for any non-use of your automobile.

3. Driveaway carries $100,000, $300,000 public liability and $10,000 property damage insurance.

4. Unless a greater value is declared hereon, the owner hereby agrees and declares that the value of the baggage, personal effects and sporting equipment described herein is released to a value not exceeding $50.00 per shipment.

The agreed or declared value of the property is hereby specifically stated by the owner to be not exceeding $____________ per shipment. For all shipments where luggage and personal effects exceed $50.00 in value, there will be an additional charge. Driveaway cannot accept shipments wherein the personal contents exceed $250.00 in value.

5. The following items are not to be in the car: Binoculars, cameras, gems, guns, jewelry, liquor, money, objects of art, optical goods, radios, tape recorders, television sets, typewriters, articles of unusual value.

6. In the event that car should be delivered with any damage or loss, owner is to refund no money to the driver. The owner shall then forward balance due upon delivery, constituting final freight bill payment due, to Driveaway within seven days after delivery of car. Retention of the balance of tariff due by the Owner at the Owner's option beyond such seven day period, or payment to the Driver by the Owner or Owner's agent, will constitute acknowledgment of satisfactory delivery and shall constitute conclusive evidence of full settlement and satisfaction of all claims against Driveaway by the Owner or Owner's agent.

7. Should Driveaway be liable on account of loss or damage to any of said property, it shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, that Driveaway reimburses the claimant for the premium paid thereon.

8. Owner assures Driveaway that car has been fully serviced and is ready for shipment and that he knows of no mechanical or structural defects which would in any way limit the safe operation of the automobile. Driveaway disclaims any liability for any mechanical or structural defects or occurrences and damages arising therefrom.

9. Owner agrees to allow Driveaway to make any adjustments or repairs up to $25.00 that may be necessary while the car is in transit. Owner to reimburse Driveaway for these repairs at time of delivery. For any repairs over $25.00, Driver or Driveaway will obtain Owner's consent before making said repairs.

10. Prices quoted by Driveaway include cost of all regular gasoline to transport automobile but does not include lubrication service, oil, maintenance, repairs or replacement parts. Rates quoted do not include any special license, permits or caravan fees that may be required.

11. Owner agrees that from October 1st to April 1st he will equip and provide the vehicle with permanent anti-freeze protection to 20° below zero and upon Owner's failure to do so he assumes all liability in connection with damage to the engine or any other part of vehicle. The owner further authorizes the carrier or driver to provide or add sufficient anti-freeze to said vehicle to protect it from any weather conditions encountered on the trip and to reimburse Driveaway or the Driver for such expense.

12. Owner designates persons listed at pick-up point or destination shown on front of this order as appointed agent for the purpose of delivering to Driveaway, or accepting from Driveaway, the Owner's vehicle.

13. This Order and any shipment hereunder is subject to all the terms and conditions of our Tariffs MF ICC #1 or #3 and subsequent issues thereof, a copy of which is available to Owner at the office of Driveaway, and are included herein by reference and made a part hereof.

14. In accordance with Rule 105 or our Tariff MF ICC #1 and Rule 85 of our Tariff MF ICC #3, on file with the Interstate Commerce Commission, a service charge of 20% of the above total cost is to be assessed if this order is cancelled.

15. This supersedes all prior written or oral representations of Driveaway and constitutes the entire agreement between owner and Driveaway and may not be changed except in writing signed by an officer of Driveaway. This shall be deemed executed by Driveaway at its principal office in Chicago, Illinois. Any claim or controversy arising out of or relating to this agreement, or the performance or breach thereof, shall be settled by arbitration in the City of Chicago, Cook County, and State of Illinois in accordance with the laws of the State of Illinois and the Rules of the American Arbitration Association.

ACCEPTED: AUTO DRIVEAWAY COMPANY, by ____________________________

Date ____________________________

PRINTED IN U.S.A. 1/71

BEST COPY AVAILABLE

4376

STATEMENT OF PAUL ZOLA

- On Behalf Of -

AAACON AUTO TRANSPORT, INC.

and

AUTO TRIP U.S.A. INC.

I. INTRODUCTION

My name is Paul Zola, and my address is 212 Tomahawk Lane, Franklin Lakes, New Jersey. I am an attorney, and was admitted to the Bar of the State of New York in 1961, and the United States District Court for the Southern District of New York in 1964.

I have practiced law for the past eleven years, both in private practice and as a staff attorney for the United States Securities and Exchange Commission from 1962 to 1965.

I have written monographs on the law of sales and the law of bills and notes in connection with teaching duties which I have held with an organization engaged in preparing law students for the New York State Bar Examinations.

APPENDIX 1974

I have been associated with AAACON AUTO TRANSPORT, INC. ("Aaacon"), a business pioneered by my father, Irving Zola, and owned and operated by my family, which is a common carrier holding Certificate Number MC 125808, issued by the Interstate Commerce Commission in December of 1966, since September 6, 1967.

I am presently a Vice President, Secretary and a director of Aaacon and I hold the same position with AUTO TRIP U.S.A. INC. I am fully familiar with the matters discussed herein in the usual course of my duties. In addition, I have investigated the various matters raised by the Bureau of Enforcement to assist in the preparation of this statement.

This statement will deal with that aspect of the instant proceeding relating to allegations that Aaacon violated its certificate of public convenience and necessity by engaging in the transportation of "....traffic moving to automobile dealers...." and to the issues raised in Aaacon's petition for a declaratory order.

The Bureau of Enforcement has alleged fifteen separate movements of automobiles which, in their opinion, violate Aaacon's certificate. It is Aaacon's position that none of these cases represents an unlawful movement as set forth in such certificate. In certain instances the Bureau's position is based upon incomplete investigation of the facts of the individual movements. In the remainder of the cases, the Bureau's position is based upon a mistake of law. In any event it is the position of Aaacon as set forth in its Petition for a Declaratory Order that the words "....traffic....moving to automobile dealers...." has a limited meaning outside the scope of any activities pursued by Aaacon, including those activities alleged by the Bureau to have violated its certificate. It is the further position of Aaacon that under the landmark decision of the Interstate Commerce Commission _In the Matter of Fox-Smythe Transportation - Oklahoma_ 106 M.C.C. 1, that the restriction is so vague that it is "inconsistent with the public interest and inimical to practicable and effective regulation" (P.8), "unclear and confusing" (P.10) "vague, indefinite and ambiguous", creates "confusion in operating authority" (P.11) and is "difficult to interpret" (P.13), and must therefore be considered a nullity. (Page references are to said decision).

II. THE FACTS CONCERNING THE FIFTEEN ALLEGED "DEALER MOVEMENTS" DISCLOSE NO MOVEMENTS IN VIOLATION OF AAACON'S CERTIFICATE.

Two separate groups of movements were testified about in the Bureau's presentation of their case. For purposes of simplicity they will be referred to as the "General Movements", six in number, which were moved by Aaacon through its offices other than ALL STATES AUTO DELIVERY, and the "ALL STATES MOVEMENTS", which were moved by Ernest Horton, doing business as ALL STATES AUTO DELIVERY, who was formerly connected with Aaacon.

A. THE GENERAL MOVEMENTS.

On the list of shipments which has been introduced in evidence as Exhibit 3, three movements appear, consigned from Prewitt Semmes, Jr., to Allen Paul Oldsmobile of Inglewood, California.

Allen Paul Oldsmobile is a company in many phases of the automobile business, doing business within the City of Inglewood, California. Prewitt Semmes is a man of advanced age, who was the former owner of Allen Paul Oldsmobile. Early in the 1960's, Mr. Semmes sold his interest in such business to one Allan Paul who changed the name of the agency and continues to operate it as proprietor. As part of the transaction of sale between Prewitt Semmes and Allen Paul, Allen Paul promised to permit the use of three automobiles annually to Prewitt Semmes as Semmes' personal automobiles. Prewitt Semmes was not to pay for these cars but was to hold them with title in his own name, in the nature of a lessee, so that no risks of loss from their operation would inhere to Allen Paul Oldsmobile despite the fact that these automobiles remain the property of Allen Paul Oldsmobile. At the end of each one year period, Prewitt Semmes was to deliver these automobiles to Allen Paul Oldsmobile and receive in their place three new Oldsmobile automobiles. The three deliveries set forth in Exhibit 3 from Prewitt Semmes to Allen Paul Oldsmobile represent three return deliveries at the end of such lease periods pursuant to the agreement of Allen Paul with Prewitt Semmes. In no manner may these be considered deliveries to an automobile dealer as they were simply redelivered to Allen Paul at the end of a "lease" period. This situation admittedly is somewhat unique as the title to the vehicles, rather than remaining in the lessor was transferred to the lessee. This transaction, however, can in no way be distinguished from the ordinary automobile lease agreement as respects return delivery to the lessor at the end of an automobile lease. These were not automobiles purchased by Allen Paul Oldsmobile for resale to the public in the ordinary course of its business out of inventory, but were merely automobiles returned by the user thereof at the end of his period of use. Aaacon Auto Transport, Inc. is not restricted against delivery of leased vehicles to the lessors thereof at the end of such leases.

These automobiles were moved by the Detroit office of Aaacon which came under new management between the movements of the first two shipments and the third shipment. We had, upon numerous occasions, instructed all offices not to handle any shipments going to automobile dealers, and these shipments were made contra to our instructions. The third of the shipments was made on the basis that the first two had been made by the former manager, who had been fired. After inquiry was made by the I.C.C. concerning these shipments, and I answered their inquiry in what was a complete and candid manner, I further inquired concerning the circumstances of the shipments and I uncovered the facts stated above. Since we had heard nothing further on the matter, it appeared unnecessary for me to further inform the I.C.C. Their Detroit office appeared to be perfectly satisfied with my initial response.

It is the firm opinion of Aaacon that this movement in no way violated the restriction appearing in our certificate. These three shipments represent one single series of transaction, which appears perfectly proper in view of its facts.

The fourth of the general movements is a movement from Burk's Motor Sales Corp. of Jamestown, New York, allegedly to Ed Cox Motor Company of Fort Walton Beach, Florida, of a 1969 Mercury Montego.

Commission's Exhibit 81, part of which appears to be the copy of a freight bill of Aaacon Auto Transport, Inc. indicates that a car was to be picked up from Burke's Motor

Sales Corp. and delivered to Ed Cox Motor Company in Fort Walton Beach, Florida. In fact, however, this automobile was never so delivered. This order was placed by mail from the office of Ford Motor Credit Company in Pensacola, Florida, to the Aaacon Auto office in Buffalo, New York, which was the closest office to the point of origin of the vehicle. The freight bill, which is Commission's Exhibit 81, does not represent Aaacon's ordinary freight bill. It was not signed by the shipper and is merely a notation made by Mr. Thomas Argy, the former manager of our Buffalo office, of the information which appeared in the letter dated January 20, 1970, attached to the freight bill, from H.J.T. Hardy of Ford Motor Credit Company to Thomas Argy. This car was in fact, however, not delivered to Ed Cox Motor Company of 327 North Elgin Parkway, Fort Walton Beach, Florida, but was delivered to the Ford Motor Credit Company at Pensacola, Florida. This information has been confirmed by a letter dated June 29, 1971, from Mr. J. L. Martin, the present Collection Manager of Ford Motor Credit Company at Pensacola, Florida, which is attached hereto as Appendix A and made a part hereof. Mr. Martin states that he was not personally the Collection Manager of the agency at the time of shipment. However, to his knowledge the Ford Motor Credit Company itself received the vehicle rather than Ed Cox Motor Company of Fort Walton Beach, Florida. This circumstance is not at all an unusual one for Aaacon. Very often we have received requests from individuals for the delivery of vehicles which for some reason or another we cannot accomplish. An example of this might be a request for delivery of a pick-up truck, which many people consider to be no different from passenger automobiles. When these requests are received from the public, contact is for the first time made with such shippers and they are told whether and under what conditions such automobiles may or may not be delivered. This is apparently what happened in the instant case. Upon investigation it appeared that Argy had called Ford Motor Credit and told them of Aaacon's certificate restriction. They then agreed to accept delivery of the auto themselves.

The fifth of the general movements alleged to be in violation of Aaacon's certificate is a 1969 Pontiac automobile, allegedly consigned to Atlantic Pontiac of Brooklyn, New York, from the Erellis Body Shop in Miami, Florida, as noted in Exhibit 81.

This movement came about in the following most unusual manner: On or about the first day of July of 1970, Aaacon acquired the services of Mrs. Lucy M. Barron as an agent of our company doing business in Pinellas Park, Florida. Mrs. Barron had previously been the agent of Insured Driveaway Systems, another common carrier doing business as a driveaway service. Attached hereto as Appendix B , is an affidavit of Harold Siroka which explains in detail the precise circumstances of this delivery. This affidavit demonstrates beyond question that the auto was in fact delivered to General Motors Acceptance Corporation, rather than Atlantic Pontiac.

In any event, it is Aaacon's position that even had this auto been delivered to Atlantic Pontiac, the fact that it was a repossessed automobile would make this delivery perfectly proper under Aaacon's certificate. The peculiar facts surrounding repossessed automobiles and their status after return to the guarantors of recourse notes will be discussed in detail below.

The sixth and last alleged improper shipment of the "general movement group" concerns an automobile which was consigned from Houston, Texas to Streit Chevrolet Company of LaMesa, California. This order was taken and completed by an Aaacon agent named Fred Habenicht who operated an office in Houston, Texas. It will be noted that this movement left Houston on or about February 24th, 1969. The management of Aaacon became aware of this movement in the middle of March, 1969 when it was reported in the ordinary course of business. An investigation was immediately initiated to determine the facts surrounding the movement and based upon information developed at that time, the management of Aaacon determined that Habenicht had violated the expressed instructions contained in the rules and regulations of our company. He was, therefore, dismissed from the company in early April of 1969.

Aaacon has, since its inception, had more stringent operational rules than its certificate required. Because of the extremely vague language of the dealer delivery restriction it was felt that movements of this nature should be restricted until further clarification of the meaning of the restriction had been made. *

Despite the fact that Habenicht had violated the rules and regulations of our company, it is the position of Aaacon that this shipment is not violative of the terms and conditions of Aaacon's certificate of public convenience and necessity because it was a repossessed automobile which was delivered for a finance company in care of the guarantor of a recourse financing agreement. This position will be more fully developed below.

I strenuously deny that any admission was made by Aaacon that the transportation of these shipments was unlawful. I certainly admitted the transportation, but nothing more.

B. THE ALL-STATES MOVEMENTS

The remainder of the alleged violations of Aaacon's certificate appearing in Exhibit 3 may be generally referred to as the "All-States Group" in that each of them was initiated

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* It will be noted that the rigorous examination made by Mr. Kampel of the Commission's staff uncovered only six questionable shipments out of more than forty-five thousand to which he had complete access.

by Ernest Horton of All States Auto Delivery, an agent of our company.

In view of the nature of these movements it will be necessary to discuss the background of Horton's operations and his entire connection with Aaacon.

In early January of 1970, I received a telephone call from Ernest J. Horton of Los Angeles, California, who told me that he was in the repossession business and wished to discuss joining our company as an agent for the movement of vehicles in connection with his presently existing business. I asked him the facts concerning his background and developed the information that he enjoyed a good reputation in his profession. Mr. Horton, among other things, was the former President of the National Finance Adjustors Bureau and presently served as a Chairman of [illegible]ne of its standing committees. He appeared to be a financially solvent individual with no record of any wrong doings that we could uncover. Mr. Horton appeared in our office on January 28, 1970 for a personal interview and the completion of contractual arrangements and told us that he ran a storage and repair facility at which he proposed to accept delivery of the vehicles which would be shipped to him from Aaacon offices throughout the country. He told us that his arrangements with the banks and finance companies included inspection, minor repairs and adjustments, and storage of the vehicles pending their dispositions. At this time, he appeared to be engaged in an operation which would include both the movements of the vehicles and the performance of other services on behalf of the shippers having nothing to do with our company and with respect to which we received no remuneration, took no responsibility nor had any interest in of any nature whatsoever. Shortly after the completion of our arrangements, Horton opened business employing as his manager a person named John MacLaughlin, a former employee of the Security National Bank in Los Angeles with an unimpeachable record.

Approximately two months thereafter, we received a telephone call from Horton at which time he told us that some of his customers, instead of wishing to have their vehicles delivered directly to Mr. Horton's premises, had requested that he make arrangements for the delivery of such vehicles to such customers in care of the holders of the recourse financing agreements pursuant to which many of these automobiles had been originally sold. We informed him at that time, that whereas we did not think that such an operation would violate our certificate, in order to be beyond the scope of any possible inquiry, it was a company rule and regulation that no such deliveries were to be made by Aaacon or its agents until further clarification of the meaning of our restriction was received from the Commission. He asked us whether it would be permissive for automobiles which he received from his customers to be further moved, after repairs, storage or any other function that he performed, to the holders of recourse notes. We told him at that time, that the banks and finance companies could make any arrangements which they saw fit for the removal of their vehicles after final delivery whether they went directly to the customer's premises or elsewhere. We had no interest or responsibility for any movement after the completion of our own. Approximately two or three weeks afterwards, in a casual conversation with John MacLaughlin, Mr. Horton's manager, he mentioned to me that a carrier by the name of Inter City Transport had been moving automobiles from Horton's premises. I inquired concerning what Inter City was and MacLaughlin told me that he had no idea except that they were a California Public Utilities Commission licensed carrier. Some time during the Fall of 1970 we began to receive inquiries from District Supervisor, Walter W. Strakosch, of the Interstate Commerce Commission concerning Horton's operation and more specifically the nature of Inter City. At this time, we inquired to Horton whether or not he had any connection with Inter City of any nature whatsoever and whether or not he knew who the owners of Inter City were. He answered negatively to both questions. We received no information to the contrary from Mr. Strakosch and therefore assumed that no problems were found to have existed.

Later on that year, we were informed by Mr. Strakosch that he was not getting cooperation from Horton in the examination of Horton's books and records as he had every right to do pursuant to his authority under the Interstate Commerce Act.

We informed Horton at that time, that he was to give to Mr. Strakosch all of the information which Mr. Strakosch desired or we would terminate his connection with our company forthwith. Mr. Strakosch has testified concerning the events surrounding the alleged "disappearance" of Mr. Horton's books and records and I can add nothing further to his statements other than to express my complete amazement and regret at what appears to have been a subterfuge on the part of Mr. Horton. I trust and hope that it will be unnecessary for me to reiterate my complete lack of knowledge of Mr. Horton's deeds in connection with this matter. The only time that I was more amazed at Mr. Horton's disclosure that the books and records had been stolen, was when Mr. Strakosch appeared with evidence that this was in fact not true. Throughout this entire period of time we offered Mr. Strakosch our complete cooperation even to the extent of my brother Ralph Zola making a personal visit to Mr. Horton with Mr. Strakosch in an attempt to resolve any problems.

The first knowledge that we had concerning any irregularities in Mr. Horton's operation was when we received copies of the Commission's Exhibit 81, the so-called All-States' invoices, which showed delivery addresses other than Horton's premises. This matter was received from the Commission in the middle of July, 1971. We then called Horton and asked for an explanation. He informed us that this information was simply used by him as further identifying information which he received from his customer and that he took no part in any deliveries other than to his own premises. He said at that time, that when he appeared in New York for our hearing which we had told him would be necessary, he would be able to demonstrate without question that this was the case. All during the period in which Horton was operating as an agent of our company we had received copies of bills of lading which showed deliveries solely and only to Horton's premises.

I have subsequently checked with the agents who shipped these automobiles who have confirmed without exception that in all cases they were told to deliver these automobiles solely and only to the premises of E. J. Horton. Aaacon had neither knowledge, any interest in, or any responsibility for any deliveries or movements of the vehicles occurring subsequent to the completion of our deliveries to the premises of Mr. Horton.

From the best information we had available, Horton was completely in compliance not only with our certificate restrictions but with the rules and regulations of our company as clearly set forth to him and all our other agents from time to time.

It is our position that if Mr. Horton had control over another carrier which completed movements from his premises to the premises of the holders of the recourse financing agreements, this may in no way be considered a violation by Aaacon of its certificate for the following reasons:

1. Aaacon took no part in any movement beyond Horton's premises and any activities engaged in by Mr. Horton in connection therewith were outside the scope of his authority as an agent of Aaacon and constituted a "frolic of his own."

2. These movements were not through movements, but were separate and distinct and interrupted by circumstances varying in each case depending upon the desires of the customers expressed at delivery.

3. Even were these shipments to be considered through movements made by Aaacon, the delivery of a repossessed vehicle to the guarantor of a recourse note does not violate the restriction contained in Aaacon's certificate of public convenience and necessity.

1. Aaacon Took No Part In Any Activity Subsequent To The Delivery Of Automobiles To Horton's Premises And Any Activity Engaged In By Horton Was Beyond The Scope Of His Authority From Aaacon And Constituted A "Frolic Of His Own."

(a) The Nature Of The Shipments.

Each of the nine (9) Allstate's movements came about in the following manner: An agent of Aaacon's, located in one of the several states, would have received an instruction from Horton's office, usually by telephone, to deliver the subject vehicle. Such agent would have received information concerning the nature of the vehicle to be moved, where the vehicle could be picked up and the delivery instructions for the movement of the vehicle. A bill of lading with respect to each such vehicle was then prepared by the office which had received the instruction from Horton (the shipping office). The shipping office would then dispatch a driver in order to obtain possession of the vehicle and complete the movement. In each and every case this driver was instructed to move the vehicle to the premises of Mr. Horton. No agent of Aaacon ever received instructions to move an automobile beyond Horton's premises or, in fact, did so. It will be noted that with respect to each of the bills of lading presented by the Commission in Exhibit 81, the instructions clearly spell out the fact that the shipment was to be made to Horton's premises. Because the mailing address which was distributed by the Corporate Office of Aaacon was a Post Office box, in many instances the telephone number of Horton's premises appears with instructions to telephone for the precise address. It will be noted that in not one single instance is there any indication on any shipping document issued by our company that an automobile was to move to any place other than Horton's premises or to continue any movement beyond Horton's premises.

(b) Aaacon's Dealings With Horton.

In the normal course of events, Aaacon accounts for all its shipments by receipt of a copy of the bill of lading issued by its agent at the Home Office. This is the nature of Aaacon's supervision of the destinations of its movements. In addition to this information, Aaacon receives a weekly revenue report which further spells out the nature of the movement and ties in to the bill of lading received by the corporate headquarters. The only other document which is ever executed in connection with an Aaacon movement is an Aaacon freight bill and order form, a copy of which is attached hereto as Appendix C and made a part hereof. Because these documents are usually filled out by the shipper and mailed to Aaacon and are, therefore, subject to correction in many instances (see for example, the discussion of the movement from Burke's Motor Sales Corporation of Jamestown, New York to Ford Motor Credit Company), the corporate office does not consider these forms as meaningful evidence of the moves actually accomplished, and does not require their submission to the corporate office.

It does appear from the documents contained in Commission's Exhibit 81 that Horton was using a form of his own invention, completely dissimilar in nature to the Aaacon freight bill and order form and containing material unauthorized by our company, in violation of his agency agreement with Aaacon. No officer or employee of Aaacon had ever seen or approved the use of Horton's alleged invoice form. It will be noted that in no place on this invoice form does the name Aaacon Auto Transport appear. In all instances in which approved variations from the official forms of the company have been permitted, because of the desires of an individual agent, Aaacon has insisted that its name appear on such form owing to the fact that this is a requirement of the Bureau of Operations of the Interstate Commerce Commission as well as the fact that at all times we want the public to know that they are in all respects dealing with Aaacon.

It may further be noted that the following statement appears on the Allstate invoice:

> "Allstates Auto Delivery guarantees any loss by client if recourse to dealer is lost by not meeting conversion date."

Aaacon Auto Transport never made any such guarantee nor has it ever allowed any of its agents to make such guarantee because, in the opinion of counsel, such guarantee may be construed to be an unlawful preference guaranteed to one group of shippers which was otherwise withheld from the shipping public at large in violation of the Interstate Commerce Act.

There is no way in the world that Aaacon can prevent any person from using its motor carrier certificate number on a document issued by such person without its knowledge and consent before Aaacon becomes aware of the fact that such use is being made. In this instance, Aaacon had absolutely no knowledge that Horton was using such documents nor may such knowledge be imputed to Aaacon.

Thus, the only possibility that Aaacon could have come to knowledge of Horton's operation occurred from and after the period of Mr. Strakosch's examination. Despite numerous phone calls back and forth between the the undersigned and Mr. Strakosch and despite the personal meeting between Mr. Strakosch and Ralph J. Zola, no indication of the existence of these documents or any other fact which would have allowed Aaacon to initiate a further investigation into Horton's operation was ever given.

By letter dated November 1, 1971, Aaacon Auto Transport terminated its relationship with Ernest J. Horton absolutely and completely on the grounds that Horton had violated the rules and regulations of the company and on the further ground that he may have been engaging in activities which he did not disclose to Aaacon as required by his contract.

Upon numerous occasions I had spoken with Horton concerning the nature of his operation and I had enjoined him to be scrupulously careful with respect to his movements in view of the limitations of our authority. In each instance he had assured me that he was living up to both the letter and the spirit of our certificate, our rules and regulations and his contract with the company. No indication existed which would have led us to institute any further investigations concerning Horton's operation until after the initiation of this proceeding. It will be noted that with respect to the first six (6) shipments on Exhibit 3, Mr. Kampel indicated during the course of his investigation that there had been questions raised. These questions in our opinion have been answered to the complete satisfaction of the Commission. With respect, however, to Mr. Horton's shipments, at no time did the Commission ever inform Aaacon Auto Transport or its agents, servants and employees that there was any problem in connection with Horton's operation except with respect to the missing records alluded to above, and the fact that Horton was doing the billing for the intra-state carriers, which we assumed was technical in nature and which he stopped at our insistence.

Aaacon received no compensation of any nature whatsoever from Intercity Auto Delivery or from any shipper or consignee in connection with any operation relating to a movement from the premises of Ernest J. Horton to any other place. Aaacon was aware that at least five (5) carriers had been engaged in movements of automobiles from Horton's premises. Whether in fact these cars were the ones which had arrived there pursuant to shipment by Aaacon Auto Transport or not, we had no way of ascertaining, as Horton was engaged in a number of activities from his premises, and whether these automobiles were being moved to the premises of banks, finance companies, guarantors of recourse auto financing agreements or anywhere else was completely beyond our knowledge and our ability to find out. The names of the other four (4) carriers engaging in such movements were Allied Towing, Los Angeles Towing, California Auto Transport and Adley Transport, in addition to Intercity Auto Delivery.

The only thing that we knew and the only thing that we had ever authorized Horton to do was to move automobiles from their points of pickup to his own premises.

Attached hereto as Appendix D and made a part hereof is a letter dated February 12, 1970, and as Appendix E a letter dated March 20, 1970, written to my brother, Ralph J. Zola and signed by Mr. Thomas J. Delaney, Associate Chief, Section of Motor Carriers of the Interstate Commerce Commission. Aaacon had made specific inquiry to Mr. Delaney by letters dated January 30, 1970 and February 5, 1970, concerning the possibility that movement of repossessed automobiles for or on behalf of banks and finance companies to said banks or finance companies or to the premises of branch offices of Aaacon might create problems. Mr. Delaney's reply clearly indicates, without the peradventure of a doubt, that it was quite permissible for Aaacon to engage in the type of business in which it firmly believed Horton was involved. It will be noted that this letter far predates any inquiry of any nature whatsoever into Aaacon's operation. The initial inquiry to Mr. Delaney was in fact made only two days after Horton had signed a contract with our company and before he had actually initiated his operation.

We emphasize the third paragraph of the letter of March 20, 1970 which states:

> "The second situation involves cars being moved for the account of a bank but brought not to the bank's premises but to a branch office of your company. The cars have been repossessed or otherwise retaken by the bank which issues instructions to your company to bring the cars into a branch office of your company. The cars are picked up from your branch offices by a third party sent by the bank. The third party has no connection with your company and may be a representative of the bank, a purchaser or another carrier. (Underscoring added)
>
> Eventually, many of the cars come to dealers but your company's connection with the transportation ends when the move performed for the bank is completed with the delivery to your branch office. In my opinion that move is not forbidden by the restriction against traffic moving to automobile dealers."

From Mr. Delaney's letter of March 20, 1970, the only open question hinges around the words "...the third party has no connection with your company". Intercity Auto Delivery had no connection of any nature whatsoever with our company.

We had no proprietary interest in it either legal or equitable. We received no funds from that company. We paid no expenses of that company. We had no idea who owned that company. We were not employed by that company nor did we employ that company and to the very best of our knowledge, we had no agents, servants or employees under common control. Horton's connection with that organization was completely unknown to us as it must now be clear from both the testimony of Mr. Strakosch and this statement. We were informed by Mr. Strakosch that the problem was one of dual billing and immediately instructed Horton to discontinue billing the customer for other than the Aaacons, as per our letter of September 4, 1970, attached as Appendix F. Under the circumstances, any activities engaged in by Mr. Horton were completely outside the scope of his agency agreement with Aaacon Auto Transport, a copy of which has been introduced into the record as Exhibit 84.

The Commission may take note of certain paragraphs of that agreement which say:

> "Paragraph 2 (a). Agent shall develop business for Aaacon in the transportation of single use automobiles, in driveaway service, and interstate commerce, within the scope of Aaacon's authority from the Interstate Commerce Commission. Agent understands the scope of that authority.

> Paragraph 2 (e). Agent shall issue Bills of Lading and Freight Bills of Aaacon exclusively on the serially numbered forms furnished to Agent by Aaacon to shippers of automobiles to be transported. A Bill of Lading and a Freight Bill shall be prepared for each automobile and charges shall be assessed by Agent strictly in accordance with the tariffs on file with the Interstate Commerce Commission.
>
> Paragraph 2 (f). Agent shall comply with all regulations and procedures as prescribed by Aaacon from time to time relating to the operation of the business within the scope of the agency created by this agreement.
>
> Paragraph 7. Agent shall not be the agent of Aaacon except to execute Bills of Lading and to furnish drivers in accordance with agreements in form furnished by Aaacon. Agent shall have no authority to enter into any other agreement on behalf of Aaacon.
>
> Paragraph 6 of a rider to the agreement. The Agent agrees that the agencies operated in the cities of Los Angeles, California, Portland, Oregon and Salt Lake City, Utah, shall be the only automobile transport agencies operated by the Agent, his agents, servants or employees, or any person controlling, controlled by or under common control with the Agent."

Thus, any activity engaged in by Horton in connection with any re-delivery of automobiles which he had previously transported under Aaacon's authority, was outside the powers which Horton and Aaacon had mutually agreed should be lodged in Horton. If Horton was engaged in the re-delivery of vehicles, Horton acted in direct violation of express instructions given to him on numerous occasions. Aaacon had taken any and every necessary step required with respect to Horton's operation to assure its absolute integrity and compliance with the law. Any activity engaged in by Horton de hors his agency agreement under these circumstances may not be imputed to Aaacon, and under the law they constitute a "frolic of his own." Horton was not performing the function with respect to which the agency had been created. Anything that he did outside this agency was not in furtherance of Aaacon's business, not for Aaacon's benefit and solely and only for the benefit of Ernest J. Horton himself.

2. The Movements of Automobiles To The Guarantors Of Recourse Financing Agreements By Horton Subsequent To The Termination Of Aaacon's Delivery Were Separate And Distinct Movements And Not Part Of One Single Through Movement.

Mr. Horton was engaged in a number of separate businesses at his premises including the following:

1) Repossession of automobiles,
2) Storage of automobiles,
3) Repair of automobiles and finally,
4) Shipment of automobiles under his Aaacon agency agreement.

Upon investigation, the following procedures were found to have been followed by Horton in the course of his operation: Automobiles would be brought in on Aaacon bills of lading with a final destination at Horton's premises. At this point, the cars were inspected by Horton doing business as E. J. Horton Associates, Inc. Certain of the automobiles were sold right then and there by Horton on behalf of the persons who had caused the delivery to be made to Horton's premises. Horton ran an auction from time to time upon his premises for the benefit of banks and finance companies with which he did business. Certain of the automobiles were subsequently moved in a shipment wholly intra-state in nature guarantors of the financing agreements with respect thereto. This processing by Horton represented a complete break in the continuity of the shipment which was handled by Aaacon in interstate commerce and terminated at Horton's premises and the shipment which began at Horton's premises and terminated wherever Horton's client wished it to.

Aaacon completely terminated its possession and all responsibility for the vehicle at the point of delivery, i.e., Horton's premises. At this point, Aaacon had no liability for anything which might subsequently damage the cargo or any liability for damage to third parties arising out of the movement of the cargo.

Aaacon received no compensation of any nature whatsoever in connection with that movement nor was any person authorized by Aaacon to have anything further to do with that cargo. Possession and responsibility for the vehicles in question terminated absolutely and completely upon delivery to Horton's premises. Interestingly, any subsequent movement which might have taken place with respect to any of the vehicles was accomplished solely and only by one of five carriers completely outside the ownership, direction, supervision and/or control of Aaacon.

Aaacon had no knowledge which carrier was to remove the vehicle from Horton's premises, if indeed the car was to be moved at all. It had no knowledge where the vehicle was going. It had no knowledge of the tariff to be assessed by that carrier. It had no knowledge of whether or not the cargo ever reached its destination. It had no responsibility to third parties arising out of the operation of that vehicle and it had no liability to the consignee of the intra-state shipment for any damage which might occur to said vehicle after the termination of Aaacon's shipment at Horton's premises.

In view of the fact that many of the automobiles delivered to Horton's premises after inspection and repair were sold at auctions by Horton it may not be inferred or said that there was any intention on the part of the shippers of said vehicles to deliver them to other destinations at the end of the interstate shipment. Any intention that such shippers had must have been formed after delivery to Horton's premises and upon inspection or repair of the vehicles, together with the market for used automobiles in California at that time. Above all, we wish once again to call to the Commission's attention the letter of Mr. Thomas J. Delaney, dated March 20, 1970, attached hereto as Appendix E and made a part hereof.

It is obvious even from a cursory reading of this letter, that the question whether or not this transaction was a through movement has been resolved. Aaacon was acting in the most complete good faith possible in relying upon Mr. Delaney's letter.

It will be noted that prior to the inception of these hearings not one scintilla of suggestion had been made by an employee of the ICC calling into question the nature of Horton's operations except as to billing which we had been led to believe was merely a question of form and not one of substance. If, in fact, Horton had control of one of the carriers engaged in the intrastate movements, no employee of the ICC who might have had knowledge of that fact saw fit to inform Aaacon in order that it remedy the situation. Aaacon has made every attempt fully to comply with the opinions of various employees of the Commission respecting the interpretation of its certificate, even where it believes that such employees might have mistaken the true state of facts or the law.

As soon as the nature of Horton's complete operation was discovered, his connection with the company was terminated without any delay or equivocation. The absolute and complete good faith of Aaacon in this respect cannot be doubted for a moment. On all information which we had concerning Horton's operation, or reasonably could have had, and in good faith reliance on Mr. Delaney's opinion, we were doing nothing in violation of our certificate even construing our restriction in the most all inclusive manner possible.

3. The Movement Of Repossessed Vehicles To Guarantors of Auto Financing Paper Is Not Prohibited By Aaacon's Certificate.

(a) A Review Of The Proceedings Leading Up To The Grant Of Aaacon's Authority Clearly Indicates That The Restriction Was Not Meant To Apply To The Movement Of Repossessed Vehicles Moving To Guarantors Of Auto Paper.

The restriction now appearing in Aaacon's certificate, "Restricted against the movement of....traffic moving to automobile dealers" was not meant to apply to repossessed vehicles moving back to guarantors of a bank or finance company's automobile paper. This restriction originally came into being upon the stipulation of certain parties to the proceeding in MC-125808 Sub 1 which resulted in the withdrawal from the proceedings of five protestants, to wit, DEALERS' TRANSIT INC., F. J. BOUTELL DRIVEAWAY CO. INC., NU-CAR CARRIERS INC., MOTOR CONVOY INC. and KENOSHA TRANSPORT INC.

The interest and business of the five protestants who withdrew from the proceeding as a result of this stipulation consisted of the bulk movement of vehicles for or on behalf of manufacturers of automobiles to dealers connected with such manufacturers for purposes of inclusion in the inventory of such dealers for resale to the public in the ordinary course of business.

It will be noted that in the authority issued to AUTO DRIVEAWAY COMPANY, MC-125985, a similar situation prevailed which resulted in a restriction "against the transportation of motor vehicles for or on behalf of manufacturers of trucks or automobiles or from the plant site of such manufacturers." This certificate was framed in such a manner to obtain the withdrawal from the proceeding of similarly situated protestants, and far more accurately describes the traffic prohibited.

Additionally, the certificate issued to DEPENDABLE CAR TRAVEL SERVICE INC., MC-125978, discloses a restriction against the transportation of automobiles "moving from or on behalf of manufacturers of new automobiles and station wagons (except licensed vehicles transported for use of personnel of manufacturers)". As in the situation of the hearing held with respect to AAACON and AUTO DRIVEAWAY, the result of the acceptance by DEPENDABLE of this restriction was a non-participation of the same type of carriers which withdrew from the Aaacon proceeding as a result of its acceptance of a restriction.

It is clear that in all cases, the business sought to be protected by the restrictions imposed upon the carriers was the business of bulk haulage of vehicles in the possession of automobile manufacturers to the dealers connected with such manufacturers for their inventory, for resale thereof to the public in the ordinary course of business.

An examination of the evidence adduced at the hearing and accepted by both the Hearing Examiner and the full Commission upon review discloses that the meaning of this restriction is precisely as stated by Aaacon. Three witnesses testified with respect to their business involving this question:

Mr. Angelo Cuilo testifying on behalf of Carnegie Automotive Equipment Lessors, engaged in the following colloquy (at page 117 of the transcript):

> "Q. Now would you explain what you have, what kind of business you have with Cadillac limousines?
>
> A. These are just livery Cadillacs and chauffeurs.
>
> Q. In the New York City area?
>
> A. Yes.
>
> Q. Do you ever have occasion when these cars have outlived their usefulness as far as you are concerned, to dispose of them?
>
> A. Oh, yes. When the market in New York is sometimes a little bit overloaded, so we have to look for markets on the outside.

Q. Such places as what?

A. Only recently we had one in San Francisco.

Q. You sold one of your livery Cadillacs to a dealer in California?

A. Yes.

Q. How do you ship them?
A. By calling Aaacon."

This evidence was not objected to by any of the remaining protestants and was accepted by the Hearing Examiner as valid evidence in support of the application. At Page 4 of the Hearing Examiner's Report, Hearing Examiner LaVecchia accepted in full the evidence of the witness without any question being raised arising out of the witness's testimony that he required the transportation of automobiles to "dealers." As the Hearing Examiner accepted this testimony in support of the application, so, indeed, did the full Commission upon review of the application.

It is crystal clear that nobody objected to the witness's testimony because the meaning of the restriction as understood by all parties and the Hearing Examiner, was not meant to cover automobile dealers acting as consignees of other than automobiles shipped by automobile manufacturers.

Mr. James Mas,Jr. testified on behalf of the Connecticut National Bank which was, among other things, in the business of financing automobile paper for various people.

These notes were guaranteed, and upon occasion, the original seller accepted delivery of automobiles as the result of such guarantees. The following testimony took place:

CROSS EXAMINATION

"Q. Where exactly did AAACON deliver these cars, up to the front door of the bank?

Mr. Kiel: Objection. Asked and answered.

Mr. Ross: Mr. Examiner, I submit it was answered in two different ways. Certainly it is a fair question on recross.

Exam. LaVecchia: Overruled. Witness may answer.

A. Well, I don't know where the driver parked the car. He came in to the bank and from that point I sent one of my representatives to go down to the car to go move it to a location of where the bank would be more suited to have the car placed. It could have been parked on the street, for all I know.

Q. (By Mr. Ross) Mr. Mas, as far as you are concerned that car was being returned to a dealer?

Mr. Kiel: Objection.

Mr. Ross: I submit it is not an objectionable question.

Exam. LaVecchia: Overruled.

Mr. Kiel: I didn't have an opportunity to finish my objection. The physical delivery of the car was explained by the witness, and what the further disposition of that car is, is immaterial to this proceeding.

Mr. Ross: I submit it is material.

Exam. LaVecchia: Overruled.

Mr. Kiel: I asked the Examiner to rule.

Mr. Ross: I beg your pardon.

A. Would you restate the question?

Q. As far as you were concerned, you were returning that car to a dealer, were you not?

A. In both cases, yes.

Mr. Ross: I have no further questions.

Exam. LaVecchia: Thank you, Mr. Mas."

Immediately after this testimony was given by the witness, remaining protestants' counsel moved to strike the witness's testimony in view of the fact that the witness "says it is being returned to a dealer and the application has been restricted against transportation to a dealer." Hearing Examiner LaVecchia denied the motion and accepted the testimony in support of the application.

At Page 8 of the Hearing Examiner's Report the Hearing Examiner completely accepted the testimony of Mr. Mas despite the fact that Mr. Mas clearly and unequivocally stated that the automobiles which he caused to be shipped were going to the guarantors of recourse notes who also happened to be automobile dealers. It is clear from the foregoing that the restriction accepted by Aaacon had no application to the shipment of repossessed automobiles moving to guarantors of financing agreements because these shipments were not made for or on behalf of manufacturers of automobiles to go to dealers to be received into their inventories for resale to the public in the ordinary course of business.

Finally, the testimony of Mr. Herbert Cooper testifying on behalf of CAR TRADERS INC gives further enlightenment concerning the meaning of the restriction. Mr. Cooper testified that he moved a number of cars to Seattle, Washington, which eventually went to dealers. After lengthy examination and cross examination, the witness disclosed that his automobiles moved first to an automobile auction in Seattle and thence, in many cases, to dealers. Hearing Examiner LaVecchia initially struck the testimony on the grounds that Car Traders "...never ships automobiles to individuals but always to dealers." (At page 5 of the Hearing Examiner's Report).

Subsequently, however, in the opinion of the Commissioner at 102 MCC, 393, 396, the Commission specifically discussed this matter and reversed the Hearing Examiner's Report and held that the evidence of Car Traders was properly admissible. The Commissioner stated as follows:

> "Car Traders is a wholesale dealer of used cars. Annually, it consigns about 150 cars, usually one at a time, to an auctioneer at Seattle, Washington. The evidence is clear that the auctioneer sells to dealers and to the public on behalf of Car Traders under a consignment to the auctioneer. The transportation is performed from the dealer or the shipper to its agent, the auctioneer in Seattle. We find that the auctioneer is not a 'dealer' as that term is generally understood."

Once again the Commission concluded that the mere fact that the consignee of the vehicles sold vehicles to the public was not sufficient to make of that consignee a "dealer". In that instance the consignee was not one who received from a manufacturer automobiles for its inventory in the regular course of its business for resale to the public, despite the fact that it had a regular business of selling cars to members of the public. It is submitted that this is further evidence of the original meaning of the restriction in Aaacon's certificate.

Another proceeding of great interest which contains a situation quite analogous to the instant case is Dominick Spinelli Common Carrier Application, MC-127957 which may be found at 107 MCC 799. In this case a restriction precisely similar in nature to Aaacon's was placed upon Spinelli's operations. An examination of the transcript in that proceeding discloses the following facts:

Mr. Serby, an attorney representing the Motor Convoy Company stated that this restriction, which had been agreed to by the applicant, was based specifically upon the restriction agreed to in the Aaacon case (record Page 10).

Exhibit "1" to the record which contains a written statement of Dominick Spinelli introduced in evidence, contains the following language at page 6: "The commercial phase (of the business) includes 1) returning repossessed vehicles for banks, finance companies and financial adjustors..."

The examination of Mr. George Osler representing the Osler Investigation Service, sheds further light on the nature of the transactions involved. In cross-examination by Mr. Harry Ross, representing Auto Driveaway Company, the following colloquies occurred:

> "Q. Now, you have been doing business with banks and finance companies over many years, 47 years, I believe you said?
>
> A. Yes.
>
> Q. Is it your impression from doing business with these banks and finance companies over the years, that as an ordinary thing they have recourse against a dealer or against someone when they repossess a car?
>
> A. Recourse or repurchase?
>
> Q. Repurchase agreement.
>
> A. That's right.
>
> Q. So the individual primarily responsible for expeditious transportation is the party for whom the bank has recourse?
>
> A. That's right.

It will be noted that with respect to this testimony, Mr. Ross appears to have been trying to prove that the witness was not competent to testify concerning the need for additional service. He concentrates on the issue of the nature of a shipment after repossession on a recourse financing agreement and made no attempt to negative the value of such testimony on the grounds that the automobiles were to be sent to the guarantors on the recourse agreements, who may or may not have also been doing business as automobile dealers. It is crystal clear that no consideration was given, either by the applicant, the protestants, the hearing examiner or the ICC to the fact that shipments of this nature were to be used as support for an application restricted against the movement of automobiles to automobile dealers.

We have searched the cases and records available in the extensive libraries of the ICC in vain, for a single word of information which would lead us to a conclusion contrary to the position here taken. Beyond the peradventure of a doubt, the restriction sought by certain of the protestants whose interest in the proceeding was thereupon terminated and agreed to by Aaacon, was meant to protect the business of moving automobiles in bulk from manufacturers to dealers.

Aaacon has never engaged in such business. Further, despite its view of the real meaning of the limitations of its certificate, Aaacon has never engaged in the business of moving automobiles from any persons or corporations to automobile dealers. Where, however, in the cases objected to by the Bureau of Enforcement, the automobiles were allegedly moved to the guarantors of recourse financing agreements who also, among other businesses engaged in by such persons, may have happened to be engaged in the purchase and sale of automobiles in the regular course of business, it cannot be said that Aaacon violated its certificate. A further elaboration of the nature of the entire transaction involved will clearly indicate that such deliveries are, in fact, "care of" deliveries for the benefit of shippers, more closely analogous to an auto delivered for a member of the public who wishes it consigned to a dealer's premises for servicing or storage after a long trip. Such a delivery would have been made to the premises of a person who was an auto dealer in another context, but who was serving as a repair or storage facility for purposes of the shipper. The delivery in such circumstances is in no way different from a delivery for a shipper to a repair or storage facility operating independently.

It must be recognized that Aaacon's restriction does not read to prohibit deliveries to the premises of an auto dealer, but to the dealer. It is quite clear that the word "dealer" in our certificate must refer to an individual or corporation acting in such capacity with respect to the transaction being examined.

(b) The Nature Of The Delivery Of A Repossessed Vehicle To The Guarantor Of The Financing Note Is A "Care Of" Delivery On Behalf Of The Consignor.

As an officer of Aaacon Auto Transport, Inc. I have done considerable research in the normal course of our business into the practices and procedures of the repossessing of automobiles and the movements subsequent thereto. As will be clearly demonstrated below, a movement which results in the delivery of an automobile to the original seller thereof, pursuant to a recourse financing agreement, is simply a delivery of such vehicle on behalf of the bank or financing agency, and must be considered such, no matter where the automobile in question finally comes to rest after such delivery.

Discussions and research with various companies engaging in the business of financing automobiles, including General Motors Acceptance Corporation, Ford Motor Credit, C.I.T. Financing Corporation, Bank of America, Manufacturers Hanover Trust Company, United California Bank and various other smaller financial agencies, have enabled me to determine precisely the nature of the transaction surrounding the repossession of an automobile.

Under and pursuant to most of the purchase agreements covering automobile financing paper, a right of recourse against the sellers of such paper in the event of default in payment by the purchasers of the collateral automobiles, is usually included. In the event of a default by such purchasers, the automobiles are initially repossessed wherever they can be found, and then in most instances brought back to the original areas from which the sales were made, for processing. When an automobile is brought back to its original location pursuant to a recourse financing agreement, the following procedure occurs:

1. The financing agency inspects the vehicle upon its return and records the condition thereof upon a form issued for such purpose.

2. The vehicle is brought to the financing agency in care of the guarantor at the premises of the guarantor or to some other person at premises not connected with the guarantor who stores and garages the vehicle on behalf of the financing agency and becomes a bailee of the vehicle. Thus, at this point in time, the relationship between the financing agency and any guarantor who stored the vehicle is precisely the same relationship as if the vehicle had been stored in a public storage facility. This also represents the very last time at which Aaacon could possibly have any connection with the vehicle.

3. Ownership, including legal title and all equitable interest in the vehicle at this point in time remains solely and only in the automobile financing agency.

4. Under Section 9 - 504 of the Uniform Commercial Code which is presently in force in most of the states, the original purchaser of the automobile from whom the car was repossessed is notified and given a period of time, usually between ten and

twenty days, in which to redeem his automobile by the appropriate payment of amounts due and owing under his financing arrangement with the financing institution. A certain percentageof these automobiles are thereupon redeemed by the defaulting purchasers. The percentage varies depending upon the location of the original sale, the economic conditions of the purchaser, the condition of the car and other similar facts which vary from case to case.

It is interesting to note that within the New York area redemptions may vary from 10% to 60%, depending upon the location of the original seller and the time of year involved. General Motors Acceptance Corporation, for example, has advised me that it has experienced redemptions far in excess of the ordinary when cars are repossessed during theperiod of a prolonged labor dispute. Very often subsequent to repossession the workers arrange with General Motors Acceptance Corporation for the return of their vehicles with payments to be continued at a future time, pending the end of a strike.

5. After the notification period is over, and in the event that the automobile is not redeemed by the purchaser, the financing agency

holds a public auction in order to dispose of the vehicle or clear title thereto for delivery to the guarantor.

It is the position of most banks and finance companies with whom I have discussed this question that the title to the automobile in question cannot be delivered to the guarantor on the recourse financing agreement unless a public auction is held. These public auctions are sometimes held upon the premises of the guarantor of the vehicle, and at other times they are held at a central auction location or other storage facility. It is the practice of most financing institutions to hold these public auctions once or twice a month in order to clear the titles to the vehicles and cut off any further right of redemption by the original purchaser.

6. A certain percentage of these vehicles is purchased by members of the public after bidding in by the financing organization in order to protect its note value. Naturally, when a car is worth more than the note balance it will never be reassigned to the dealer. In the event that no member of the public purchases the vehicle, the financing institution,

by virtue of its bid, then becomes the owner thereof and has the legal authority to transfer title to the guarantor on the financing agreement. There is absolutely no way to determine, up until the time of the completion of the auction, whether or not a third person will buy the car or the financing institution will purchase it because this auction is a public sale, and subject to all of the uncertainties of the ordinary and usual auction sale.

7. If, and only if, the financing institution purchases an automobile pursuant to its bid at public auction, at that point in time, usually six weeks to two months after Aaacon has had any connection with the vehicle, it assigns the financial agreement and the vehicle which is collateral with respect thereto, to the guarantor thereof pursuant to its contract.

We wish to emphasize certain aspects of this transaction:

(a) The delivery of the motor vehicle to the guarantor, if at all, is solely and only for storage for the account of the financing institution, and such automobiles so delivered are held in custody, as a bailee, by the guarantor, and solely and only as the agent of the financing institution. At the time of delivery, such guarantor has no interest of any nature whatsoever in the vehicle and it is solely and only for the convenience of the financing institutions that the automobiles are ever stored upon the premises of the guarantor prior to public auction. (It will be further noted that the Commission in its decision of Aaacon's original application for authority specifically exempted the delivery of cars for auction from the restriction involved.)

(b) The legal ownership and responsibility, risk of loss and all other rights and liabilities respecting such motor vehicle during storage remain in the financing institution unless and until title thereto is subsequently transferred to the guarantor.

(c) At the time of delivery for storage to the guarantor the financing institution has no way to ascertain whether in fact ownership of such vehicle will ever be transferred to the guarantor pursuant to the guarantee agreement, and it must await the outcome of the foregoing series of events, including the redemption and the public auction, to determine whether or not such transfer will ever take place.

(d) It is not until a period of time quite remote from the time of delivery to the premises of the guarantor that he may acquire any interest in such automobile and the automobile will be delivered to him only at that time pursuant to his performance on the agreement of guarantee and receipt of collateral in connection therewith.

(e) Aaacon Auto Transport has absolutely no way to determine, either at the time of consignment or after delivery, what will happen to this vehicle after its shipment is over. If the owner thereof cannot determine whether, some six to eight weeks later, the car will be delivered to the guarantor, Aaacon is clearly in no position to make such a determination.

Attached hereto as Appendix G, is a letter to Aaacon Auto Transport, Inc. from Mr. E. J. DeZorzi, Assistant Cashier of Specialized Loans, which sets forth the procedure used by the Bank of America respecting the reassignment of guaranteed financial paper collateralized by a repossessed vehicle. It will be noted that the Bank of America has a procedure different in one respect from the general procedure used by financial institutions in the enforcement of guarantee agreements.

The position taken by the Bank of America is that public auction is not necessarily required in order for them to clear title to a vehicle. Their interpretation of the Uniform Commercial Code is such that they take the position that their private sale to the guarantor will clear title and that a public sale is not necessary. The only respect in which this differs from the general financing arrangements is in the lack of public sale. The delivery to the guarantor is still for the account of the Bank of America. The redemption period and notice must still occur, and in no other way does the Bank of America's procedure differ from the procedure set forth above.

It is interesting to note that on page 3 of the document attached to Aaacon's bill of lading, 8028, contained in Commission's Exhibit 81, the following words appear:

> "We hereby acknowledge receipt of the above described car and agree to hold the Bank of America National Trust & Savings Association harmless from any liability of any nature which is caused while the car is in our possession."

On Page 3 of the document attached to Allstates No.879 invoice contained in the Commission's Exhibit 81, the following words appear:

> "We hereby acknowledge receipt of the above described vehicle and agree to hold Security Pacific National Bank (Bank), harmless from any liability of any nature which is caused thereby while the vehicle is in our possession."

It is crystal clear that had these automobiles been delivered to the guarantor and at that time become their property, such language would be totally unnecessary as the owner of the vehicle would, naturally enough, be the person solely and only responsible for liability arising out of or in connection with possession of said vehicle.

That, however, is not the case with a repossessed car. The only function which the guarantor has at the end of an Aaacon delivery is to store and hold the automobile for the bank or financing institution. The car is not delivered to a person acting as a dealer, but may simply be delivered for the convenience of the financing institution to the storage facility of the guarantor. At this point in time, the guarantor does not function as a dealer. He functions simply as a storage facility. He may not do anything with respect to that automobile; he may not buy it, he may not sell it, he may not repair it, he may not use it for his own purposes. He has no right in the vehicle of any nature whatsoever but is simply used as a storage facility for the convenience of the shipping financing institution.

I have had the opportunity of examining the receipt issued by G.M.A.C. for use in connection with its delivery of repossessed vehicles. The receipt throws further light on the nature of the transaction in that it states that the person receiving the repossessed vehicle does so "... for storage purposes only."

Chrysler Credit Corporation issues, in lieu of a delivery receipt, a document entitled "Repossession Trust Receipt" in which the recipient of the vehicle becomes a "trustee" for Chrysler Credit with title remaining solely and only in Chrysler Credit.

Thus, it is crystal clear that the delivery of a repossessed automobile to a financing institution, in care of the guarantor on the paper, is not "traffic moving to automobile dealers", and thus any participation by Aaacon Auto Transport Inc. in such traffic is perfectly permissible under law.

It will be noted that despite what appears to be a clearly tenable legal position, Aaacon Auto Transport, Inc. has never engaged in this traffic, believing that because questions might have been raised, before it did so it should receive definitive interpretation from the Interstate Commerce Commission.

This proceeding is not the first time that we have sought to receive this definitive statement. By application dated October 2[illegible], 1970, Aaacon initiated a proceeding for additional authority to permit the delivery of repossessed vehicles to dealers, which included in such application the following:

> "Applicant believes that it now holds authority in MC-125808 Sub. 1, to perform substantially all the service which it here seeks, but seeks resolution of the question whether restriction against handling 'traffic moving to dealers' permits the transportation of repossessed automobiles, etc., which move to a guarantor of a note who also happens to be an automobile dealer."

This application was made approximately six months before the initiation of the present proceeding. Subsequent thereto, Aaacon withdrew that application and in its stead petitioned for a Declaratory Order interpreting the meaning of its restriction under Docket Number MC-125808 Sub. 1, which was subsequently consolidated into this proceeding under Docket Number MC-C-7287 Sub. 1, for reasons best known to the Commission.

We take this opportunity to point out to the Commission that despite our interpretation of the rights, in the course of our operation since we obtained our Certificate in December of 1966, and covering the movements of in excess of 104,000 shipments, the most rigorous investigation conducted by the Commission which included inquiries with all I. C. C. field offices, has uncovered one single shipment that was alleged to be moved to the guarantor of financial paper, who also may have been the original seller of the vehicle, and eleven shipments which were moved to either agents of Aaacon Auto Transport, Inc. or the storage facilities of a finance company.

It should be further pointed out that the eleven movements so completed were made pursuant to clear and unequivocal interpretation of Aaacon's certificate rendered by Mr. Thomas J. Delaney of the Bureau of Operations of the Commission, to Aaacon Auto Transport, Inc.

(c) Under Applicable Law And The Doctrine Of Fox-Smythe Transportation Company, 106 M.C.C. 1, The Restriction Concerning "Traffic....Moving To Automobile Dealers" Has Not Been Violated By Aaacon And Fails To Meet The Requirements For Valid Restrictions.

I will not burden the record with a repetition of the substance of the Petition For A Declaratory Order filed by Aaacon on June 18, 1971, which must be read in connection with this statement. I wish to emphasize, however, that with respect to the fifteen alleged dealer movements contained in Commission's Exhibit 3, ten of such movements terminated in the State of California in connection with the repossession of automobiles. Even had these cars been delivered directly to the guarantors of the recourse financing agreements, under no circumstances could it have been said that those automobiles went to dealers. Section 268 of the California Motor Vehicle Code specifically exempts, among others, "persons...coming into possession of a vehicle in the regular course of business who shall sell such vehicle under a contractual right or obligation....provided such sale is for the purpose of saving the seller from loss."

Thus, under the very language of the governing statute, pursuant to which guarantors of a recourse financing agreement operate, they are specifically exempted from the status of dealership.

Nothing can be clearer than the unutterable confusion that occurs in attempting to define the word "dealer" contained in Aaacon's certificate when one analyzes the situation with respect to a repossessed automobile. As demonstrated above, the majority of repossessed vehicles are sold at auction some time after the termination of Aaacon's delivery. The opinion of the Interstate Commerce Commission leaves no doubt that any vehicle which is moved for the purpose of auction may be moved by Aaacon. But since admittedly, all repossessed vehicles are not sold at auction Aaacon might be placed in the unenviable position of having to determine whether or not the vehicles in question were moved for purposes of auction, for purposes of subsequent transfer to the guarantor or for purposes of redemption by the purchasers of said vehicles. No carrier can bear such a burden especially in view of the fact that the final disposition of such vehicle occurs after the termination of the shipment.

If ever a restriction fell under the Fox-Smythe doctrine, it is this restriction.

As set forth in the Petition for a Declaratory Order, there are numerous examples of restrictions proposing to confine certificates to a class of shippers or to a specific type of consignor or consignee, which were modified or eliminated. The proposed restrictions were indefinite, ambiguous and difficult to interpret. Not only has Aaacon a restriction that is indefinite, ambiguous and difficult to interpret, as may be seen by the most cursory reading of the fourteen questions posed by Aaacon in its Petition for a Declaratory Order, but even were that restriction perfectly clear, Aaacon is faced with a situation in which it has no way to determine whether or not any vehicle which it moves is being moved for a proscribed purpose.

CONCLUSION

In view of the foregoing, it is respectfully submitted that Aaacon committed no violation of the restriction contained in its certificate with respect to traffic moving to automobile dealers, and it is further respectfully submitted that the restriction contained in Aaacon's certificate is null and void under the Fox-Smythe doctrine, and it is further respectfully submitted that even if this is not so, any reasonable interpretation of the restriction must find that

Aaacon has authority to transport used passenger automobiles to persons otherwise in the automobile business, except where Aaacon should reasonably be aware that said person has purchased the vehicle for purposes of resale from its inventory in the ordinery course of its business.

Ford Motor Credit Company

P. O. Box 8006
Pensacola, Florida 32505

November 17, 1971

"Aaacon Auto Transport, Inc.
147 West 42nd. Street
New York, New York 10036

Gentlemen:

You have inquired concerning the circumstances surrounding the shipment of a 1969 Mercury, Montego to Ford Motor Credit Company in January or February of 1970.

I was personally not the Collection Manager of this agency at that time. However, to the best of my knowledge, this car was delivered by your company to Ford Motor Credit Company rather than Ed Cox Motor Company of Ft. Walton Beach, Florida as we had originally requested by letter.

I sincerely hope that this is the information which you desired.

Very truly yours,

FORD MOTOR CREDIT CO.

J. L. Martin

J. L. Martin
Collection Supervisor

JLM:dt

APPENDIX 2028

APP

AFFIDAVIT

STATE OF NEW YORK) SS
COUNTY OF NEW YORK)

HAROLD SIROKA, being duly sworn, deposes and says:

1. I am the Sales Manager of ATLANTIC PONTIAC, located in Brooklyn, New York. During the last week of June, 1970, GENERAL MOTORS ACCEPTANCE CORPORATION contacted INSURED TRANSPORTERS in New York City, in order to have returned to GENERAL MOTORS ACCEPTANCE CORPORATION a 1969 Pontiac automobile, Lincense Number KG5074 of the State of New York. This automobile was located at the Erellis Body Shop in Miami, Florida.

2. Shortly thereafter, we received a word from MRS. LUCY BARRON of Pinellas Park, Florida, that she had been the former agent of INSURED TRANSPORTERS but that she had recently become an agent of AAACON AUTO TRANSPORT, INC. She stated that she was ready and willing to perform the delivery and she was instructed to go ahead and do so. Approximately three days later, we received word from MRS. BARRON who told us that AAACON AUTO TRANSPORT, INC. could not deliver the automobile in question to a dealer but instead, would deliver it to GENERAL MOTORS ACCEPTANCE CORPORATION.

3. MRS. BARRON was told that we had no objection to such delivery because in any event, had the car been delivered to ATLANTIC PONTIAC, we would only have had to inspect it and then re-deliver it to GENERAL MOTORS ACCEPTANCE CORPORATION which was its final destination. MRS. BARRON agreed that her driver would bring the car to ATLANTIC PONTIAC for inspection and then would make the final delivery to GENERAL MOTORS ACCEPTANCE CORPORATION.

4. On July 20, 1970, the driver, MR. ANDREW McFARLAND appeared at the office of ATLANTIC PONTIAC with the 1969 Pontiac in question. I duly inspected the vehicle in accordance with my duties for GENERAL MOTORS ACCEPTANCE CORPORATION, and instructed Mr. McFARLAND to deliver the car to the Fleetwood Garage, at 155 Sterling Place, Brooklyn, New York, upon whose premises GENERAL MOTORS ACCEPTANCE CORPORATION stored its automobiles in parking space leased by it for such purpose.

5. The only reason it came to ATLANTIC PONTIAC at all was so that we could inspect it as agents for GENERAL MOTORS ACCEPTANCE CORPORATION.

Harold Siroka
Harold Siroka

Sworn to before me this
15th day of October, 1971.

Michael G. Ames

MICHAEL G. AMES
Notary Public, State of New York
No. 31-0060695
Qualified in New York County
Commission Expires March 30, 1973

AAACON AUTO TRANSPORT INC.

NEW YORK - LO 3-2222 142 West 42nd St.
CHICAGO - HA 7-0086 202 South State St.
DETROIT - 963-2111 1110 Shelby St.
DENVER - 825-9191 1615 California St.
ST. LOUIS - CE 1-7035 511 Locust St.
PHOENIX - 264-0201 222 West Osborn Rd.
BOSTON - KE 6-0120 230 Boylston St.
CLEVELAND - 781-6263 1836 Euclid Ave.
WASHINGTON, D.C. - 737-7030 1025 Vermont NW
PHILADELPHIA - LO 4-4326 1612 Market St.
PITTSBURGH - 471-5144 717 Liberty Ave.

NEW YORK
147 WEST 42 STREET
LO 3-2222

LOS ANGELES - MA 4-6644 707 S. Broadway
ATLANTA - 523-7644 2989 N. Fulton NE
SAN DIEGO - 234-6511 235 Broadway
SAN FRANCISCO - 431-0664 1095 Market St.
ST. PETERSBURG - 896-4634 2422 Central Ave.
DALLAS - RI 2-4271 912 Commerce St.
FT. LAUDERDALE - 525-0491 1806B E. Sunrise
SEATTLE - MU 2-2277 1904 3rd Ave.
MIAMI - 358-1226 10 N.E. 3rd Ave.
KANSAS CITY - HA 1-1300 6309 Morningside
HOLLYWOOD, FLA. - 929-1261 1825 Tyler St.

BONDED AND INSURED AUTOMOBILE TRANSPORTERS • OFFICES IN ALL MAJOR CITIES U.S.A.

FREIGHT BILL – ORDER FORM

Kindly Fill Information Below – Sign and Mail This Copy to Us Immediately

THE CAR OWNER AGREES TO PLACE ALL LUGGAGE IN THE CAR TRUNK ONLY. LUGGAGE LIST.

EGISTERED AR OWNER

EGISTERED TREET ADDRESS

EGISTERED TY & STATE TELEPHONE NUMBER

AR MAKE YEAR	TYPE	MODEL DOOR
CENSE UMBER	STATE	ENGINE OR SERIAL #
OWER RAKES	POWER STEERING	AUTOMATIC TRANSMISSION
ADIO	HEATER	SPARE TIRE
ONDITION F TIRES	AIR CONDITION	COLOR

AR OWNERS NSURANCE CO. INSURANCE POLICY #

ICK UP DATE PICK UP CAR FROM –

AME

AR WILL BE LOCATED T – STREET ADDRESS

TY & TATE PHONE NUMBER

DELIVER CAR TO–

AME

TATE DDRESS

TY & TATE PHONE NUMBER

OTAL RICE $ AS FOLLOWS $ WITH THIS ORDER – BALANCE OF $

N CASH TO DRIVER AT DESTINATION

UBJECT TO AND INCORPORATING ALL PROVISIONS OF CARRIER'S ~~BILL OF LADING WHICH IS REPRO-~~ UCED ON REVERSE SIDE HEREOF.

IGNED BY CAR OWNER SHIPPER) OR HIS AGENT X

APPENDIX 2031

R	FM	BM	CL

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PICK UP DATE

ESTIMATED
DUE DATE

AAACON AUTO TRANSPORT, INC.

BILL OF LADING AGREEMENT

PICK UP CAR FROM-

CONSIGNEE -

REGISTERED CAR OWNER (SHIPPER)

REGISTERED ADDRESS

CITY & STATE

CAR MAKE

TYPE

MODEL DOORS

LICENSE #

AUTOMATIC TRANS

POWER BRAKES

POWER STEERING

SERIAL #

CONDITION REPORT — ✓GOOD · F FAIR · B BROKEN · C CRACKED · D DENTED · S SCRATCHED · P PITTED · X MISSING

RF FENDER		LF WINDOW		TIRE JACK		ROOF		LUGGAGE IN TRUNK **ONLY**
FRONT BUMPER		LF DOOR		SPARE TIRE-WHEEL		HUB CAPS		
FRONT GRILLE		L BODY SILL		R LIGHTS		RADIO		
FRONT LIGHTS		LR WINDOW		RR PANEL		HEATER		
HOOD		LR DOOR		RR WINDOW		UPHOLSTERY		
WINDSHIELD		LR PANEL		RR DOOR		KEYS		
LF FENDER		TRUNK LID		R BODY SILL		RR FENDER		
RF VENT WINDOW		R BUMPER		RF WINDOW		LR FENDER		
LF VENT WINDOW		R WINDOW		RF DOOR				

Shipper understands and agrees that shipper is responsible to tender the vehicle to carrier in good operating and mechanical condition. Shipper is solely responsible for all damages and liabilities arising from inherent mechanical or operational vice or defect in the vehicle in the absence of carrier fault. Carrier and shipper agree that no car rentals or any other special damages including, but not limited to those for non-use of the vehicle are within the contemplation of the parties for delay in delivery nor shall carrier be responsible therefor, unless notified thereof prior to tender of vehicle by shipper and said notice is acknowledged in writing by an officer of the carrier. Shipper understands and agrees that unless professional service is requested by shipper pursuant to Tariff MF ICC #7, carrier shall use casual drivers who are independent contractors. Shipper agrees to pay driver for necessary repairs to said vehicle of less than $25.00 without shipper's prior consent, and repairs in excess of $25.00 with shipper's prior consent. In the event of damage or loss to said vehicle, shipper shall retain all or part of driver's fee and forward same to carrier within seven days after said damage or loss occurs, or car is received, whichever is later. Payment to the driver by shipper or shipper's agent shall be evidence of satisfactory delivery of the vehicle. Should carrier be liable on account of loss or damage to any of said property, it shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the contracts of insurance, provided that carrier reimburse the claimant for the premium paid thereon. Unless a greater value is declared thereon above, shipper agrees that the declared value of all personal property in the vehicle is under fifty dollars and hereby releases carrier from all obligations for loss or damage thereto in excess of fifty dollars. In any event personal property shall not exceed a designated value of $250. All terms and conditions of the Uniform Straight Bill of Lading, a copy of which is available to shipper and driver at the office of carrier, are included herein by reference and made a part hereof. Any notice required under said Uniform Straight Bill of Lading shall be personally signed by and forwarded by the shipper to carrier. Shipper shall take all steps necessary to mitigate or recover damages from any third person liable therefor. Driver shall be responsible for all violations of law during the time that the vehicle is in his possession. Shipper agrees that driver may be accompanied by other authorized persons while transporting automobile. Driver and shipper consent to the personal jurisdiction of New York State and Federal Courts, and to service of process upon driver or shipper for commencement of any action in connection herewith by certified mail addressed to his last known address within the United States. This Bill of Lading Agreement supersedes all prior written or oral representations of carrier and constitutes the entire agreement between shipper and carrier and shipper and driver and may not be changed except in writing signed by an officer of carrier. Any claim or controversy, whether founded in contract or tort, arising out of or relating to this agreement or performance or breach thereof shall be settled by arbitration in New York City. Upon said arbitration, the arbitrator's jurisdiction shall be limited to enforcement and application, without exception, of the provisions of this agreement and, at the request of any party, of the rules and laws of evidence of the state in which said arbitration is held. Should the arbitrator vary or fail to apply and enforce, strictly, any provision of this agreement, or said rules and laws of evidence, for any reason whatsoever, said arbitrator shall be ousted of jurisdiction, and any award made by said arbitrator shall be null and void, and thereafter arbitration shall be recommenced in accordance herewith.

AGREEMENT UNDERSTOOD AND ACCEPTED	DELIVERED IN THE ABOVE CONDITION EXCEPT AS NOTED
SHIPPER OR SHIPPER'S AGENT **X**	CONSIGNEE (SHIPPER'S AGENT) **X**
DRIVER	DRIVER RECEIVED FULL PAYMENT
DATE	DATE

TOTAL PAYMENT DUE AT DESTINATION $ ONLY, IN CASH TO DRIVER WHEN CAR IS DELIVERED IN SATISFACTORY CONDITION.

DRIVER SHALL PURCHASE PERMITS IN ARIZONA, NEW MEXICO AND NEVADA WHERE REQUIRED BY LAW.

DRIVER DESTINATION

NAME

ADDRESS

CITY

PHONE

I, THE DRIVER HAVE THIS DAY ____________

DEPOSITED WITH AAACON, THE TOTAL SUM OF

DOLLARS ($)

AS A BOND DEPOSIT.

SIGNED DRIVER.

APPENDIX 2032

Interstate Commerce Commission
BUREAU OF OPERATIONS
Washington, D.C. 20423
February 12, 1970

IN REPLY REFER TO: MC 125808

Mr. Ralph J. Zola
147 West Forty-Second Street
New York, New York 10036

Dear Mr. Zola:

This responds to your letters of January 30, and February 5, 1970, referring to the restriction in your certificate MC 125808 to "traffic xxx moving to automobile dealers".

As for traffic delivered by you to banks or other financial institutions, there is no specific restriction covering such traffic. The report on your application for authority, 102 M.C.C. 393, mentions the transportation of repossessed cars for a bank in Bridgeport, Connecticut. Transportation of cars for a bank to the bank premises would seem to be within your authority. The fact that the bank later arranged for their delivery to a dealer, apart from your company, and pursuant to its financing arrangements, would not seem material.

The second situation involves cars which are consigned to branch offices of your company, from which they are picked up by a third person, who has no connection with your company, and transported to a dealer. These cars apparently are being shipped to a dealer but are consigned to your office to avoid consignment directly to the dealer. Such movements, in my informal opinion, constitute "traffic xxx moving to automobile dealers" and are forbidden by the restriction. They are not similar to the movements for the bank nor those to auction houses, both of which are the actual consignees of the shipments and have a legitimate interest in the cars. In your cited situation the cars are moving to the dealers, and their consignment to a point other than the dealers' premises, whether it be your offices, a public parking lot, or some other location where the cars will be received for the dealer, does not take the cars out of the restriction, in my opinion.

Very truly yours,

APPENDIX 2033

T. J. Delaney

T. J. Delaney, Associate Chief
Section of Motor Carriers

App D

Interstate Commerce Commission
BUREAU OF OPERATIONS
Washington, D.C. 20423

March 20, 1970

IN REPLY REFER TO: MC-125808

Mr. Ralph J. Zola
147 West Forty-Second Street
New York, New York 10036

Dear Mr. Zola:

This supplements and supersedes my letter of February 12, 1970, in answer to yours of January 30 and February 5, 1970, concerning the restriction in your certificate, MC-125808, against "traffic xxx moving to automobile dealers". You have furnished further details orally.

As for traffic delivered by you to banks or other financial institutions, there is no specific restriction covering such traffic. The report on your application for authority, 102 M.C.C. 393, mentions the transportation of repossessed cars for a bank in Bridgeport, Connecticut. Transportation of cars for a bank to the bank premises would seem to be within your authority. The fact that the bank later arranged for their delivery to a dealer, apart from your company, and pursuant to its financing arrangements, would not seem material.

The second situation involves cars being moved for the account of a bank but brought not to the bank's premises but to a branch office of your company. The cars have been repossessed or otherwise retaken by the bank which issues instructions to your company to bring the cars in to a branch office of your company. The cars are picked up from your branches by a third party sent by the bank. The third party has no connection with your company, and may be a representative of the bank, a purchaser, or another carrier. Eventually many of the cars go to dealers, but your company's connection with the transportation ends when the move performed for the bank is completed with the delivery to your branch office. In my informal opinion that move is not forbidden by the restriction against traffic moving to automobile dealers.

Very truly yours

T. J. Delaney, Associate Chief
Section of Motor Carriers

APPENDIX 2034

App E

Aaacon Auto Transport, Inc.

147 WEST FORTY-SECOND STREET, NEW YORK, N. Y. 10036 • (212) LO 3 2222

September 4, 1970

Ernest Horton
Los Angeles Office

Dear Ernest:

It has just come to our attention that in the case of certain repossessed vehicles being transported by your office for banks and finance companies, the contract of transportation is from the point of origin to your office as the point of destination and that with regard to some of these vehicles the banks and finance companies arrange with other independent carriers for further transportation for which our company is not responsible.

In these situations the banks understand, and our bill of lading provides that our obligation with regard to the transportation or risk of damage to the vehicle terminates at the point of consignment, i.e., Allstates Auto Delivery, 1130 West 20th Street, Los Angeles. However, it has further come to our attention that on occasion, for purposes of convenience, the subsequent carrier has submitted his bill for services through our company for collection from the bank. This is to inform you that such practices are to cease forthwith. We are not a collection agency for other carriers, nor do we wish to give the impression of being so.

Arrangements made by shippers for subsequent transportation should be paid for by the shippers and the subsequent carrier in the manner agreed to between them. It is not our concern and inasmuch as we do not participate in the revenues or operations of these carriers, we wish this practice eliminated immediately. Please sign the copy of this letter enclosed herein.

Very truly yours,

Ralph J. Zola
Executive Vice President

9-18-70

I have read the above, understood and will comply therewith

IA AIRMAIL

Cable Address—BANKAMERICA

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SPECIALIZED LOANS #3351
SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO 20, CALIFORNIA

December 1, 1971

Mr. Paul A. Zola
Executive Vice President
AAACON Auto Transportation, Inc.
147 West Forty Second Street
New York, New York 10036

Dear Mr. Zola:

Our legal department has reviewed each of the six paragraphs outlined in your letter to Vice President W. E. Fulton dated November 10, 1971 and found there are essential differences, at least as to form. In their views, the paragraphs are more accurately stated as follows:

1. The Bank purchases from sellers of automobiles purchase money security agreements covering the sales. The terms of the assignments to the Bank and the terms of the dealer agreements under which the assignments are made contain provisions respecting default by the purchasers that require the sellers to repurchase the security agreements upon the happening of certain events.

2. When an automobile is repossessed owing to the default of the original purchaser the Bank obtains possession of the vehicle and effects a redelivery thereof to the original seller as part of the process of having the seller repurchase the security agreement from the Bank.

3. The security interest in the vehicle prior, during repossession and after redelivery to the seller remains in the Bank until the seller repurchases the security agreement from the Bank.

4. The vehicle which is delivered to the seller may or may not eventually become the property of the seller at a future time. The original purchaser has at least 10 days (20 days if out of state) to redeem the vehicle from the Bank after written notice, which is usually given at a time subsequent to the delivery to the seller. In some number of instances the original purchaser does redeem the vehicle.

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VIA AIRMAIL

5. It is only at a time after delivery and upon conditions which may or may not come to pass subsequent to the delivery that the seller repurchases the security agreements and thus reacquire a security interest in the vehicle. The Bank has no certain way of determining whether the seller will so reacquire a security interest in the vehicle until a time subsequent to the delivery of the vehicle.

6. Certain vehicles repossessed by the Bank and brought to San Francisco are never delivered to the original seller for various reasons including: the seller is no longer in business; the Bank no longer has recourse against the seller; or because the original purchaser of the vehicle has redeemed it pursuant to his rights under California law.

Our legal department has dropped the word "entrustor". It is our legal department's opinion that the dealer holds the vehicle as the Bank's agent until the security agreement is reassigned. However, they assume the Bank would like to avoid having to put any label on this relationship.

If I can be of any further assistance to you in the matter, please let me know.

Sincerely,

EJ DeZorzi

E. J. DeZorzi
Assistant Cashier
Specialized Loans

EJDZ:vgj

APPENDIX 2037

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